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The Solicitors' Journal

[REGISTERED AS A NEWSPAPER.]

VOL. LXXII. No. 22 [PAGES 357 TO 372]. **Saturday, June 2, 1928.** PRICE 1s.

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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

The Verdict of a Coroner's Jury.

IN A LETTER which appeared in *The Times* last Tuesday, Mr. H. A. HOLLOND, of Trinity College, Cambridge, draws attention to the anomalous effect of a finding in an inquest by a coroner's jury. From the various newspaper reports of the inquest held on a Forest of Dean farmer, HARRY PACE, it appears that the jury were, in the first instance, about to report a finding of death by poisoning, and were not prepared to indicate who they thought had administered the poison. Now, the Coroners Act, 1887, s. 4 (3), requires a jury who find that a deceased person came by his death by murder or manslaughter to certify (so far as such particulars have been proved to them) the persons, if any, whom the jury find to have been guilty of such murder or manslaughter. Accordingly the coroner requested the jury to re-consider their finding, with the result that they reported as follows: "We find that the deceased, HARRY PACE, met his death at Fetter Hill on 10th January, 1928, by arsenical poisoning administered by BEATRICE ANNIE PACE." The point which Mr. HOLLOND makes is that, though the jury's finding is in substance only a charge, and is recognised as such merely, by the Coroners Act, nevertheless if Mrs. PACE is acquitted on trial the fact will remain and be generally recorded that a coroner's jury actually found Mrs. PACE to have killed her husband by poison. All who give the matter serious consideration must agree with Mr. HOLLOND that justice, as well as logic, demands the removal of such a misuse of language from our Statute Book.

Women Jurors in Indecent Cases.

OPINIONS DIFFER as to the propriety of women being members of a jury which has to try a charge of indecency where the parties concerned are males only, and the discretion conferred on the judge by s. 1 of the Sex Disqualification (Removal) Act, 1919, to exclude persons of either sex from the jury has been variously exercised. How wide that discretion is was illustrated by *R.* v. *Vaquier*, 1924, 18 Cr. App. R. 112, where AVORY, J., excluded women where the trial was for murder and most people could see no good reason for that exclusion. The Recorder of London, in *R.* v. *Hudson*, tried at the Central Criminal Court, on the 22nd May, is reported as thinking it "very deplorable" that women jurors should desire to retire when a man was to be tried for attempted indecent offence with young boys. Three women retired and were replaced by two more courageous members of their own sex and one man. The Recorder said that had the children been girls he would not have acceded to the women jurors' application to be allowed to retire. In the case of *Nelson* v. *Moir*, 1923, *The Times*, 17th February, the Court of Appeal took up a remark of counsel animadverting upon the presence of women upon the jury in an unpleasant case, and Lord Justices BANKES, SCRUTTON and YOUNGER each expressed themselves to the effect that women who accepted the unpleasant duty were to be commended for their public spirit. Old notions die hard, and those of us born in the reign of VICTORIA still instinctively shrink when our drilled-in ideas of propriety are touched, but the change has to be accepted in a sane way. The world is no longer a world of men with a reserved enclosure for women, but a place where all must look at the truth with open eyes, whether they like what they see or not. A suggestion in the *Evening Standard* that women ought to be on juries in cases where children are witnesses because they "evolve a sort of special nursery technique and have an uncanny sense for a falsehood on a child's lips" is interesting but unconvincing.

An Undergraduate "Duel."

IN AN interview, one of the two Oxford undergraduates alleged to have fought with duelling-swords, in eighteenth century costume, at "Dead Man's Walk," Merton College, is reported to have said "as it happens, we can both fence fairly well, so there was not much danger of serious injury." Perhaps this is evidence that the duel was one "*pour rire*," for the sweet uses of advertisement, like that between French politicians so graphically described by MARK TWAIN. Otherwise the best fencers in the world could not guarantee that a duel with "sharps" would not end in serious or fatal injury, and in fact no stage duel can be otherwise than a "set-piece," however accomplished swordsmen the actors may be. The law as to real duels is, of course, clear and uncompromising. A fatal ending exposes not only the surviving principal, but seconds and doctors, and all aiding and abetting, to indictment for murder, as laid down in *R.* v. *Cuddy*, 1843, 1 C. & K. 210, and see also *R.* v. *Young and Webber*, 1838, 8 C. & P. 644. The passer-by, who, very naturally, inquired "if all the fuss was for the films," might, if he had watched the proceedings and there had been a fatal end, have ridden off on *R.* v. *Coney*, 1882, 8 Q.B.D. 534 (a prize-fight case), but he would have been rather lucky if he had done so. There is a notion that English duellists can safely cross over to France for their "affair," but a reference to s. 9 of the Offences against the Person Act, 1861, will show clearly that an indictment for murder will certainly lie in such case. Whether extradition could be demanded after acquittal by a French jury is a different matter. The absence of a Court of Honour in England corresponding to the "Tribunal des Maréchaux" at one time caused some concern to Prince ALBERT, possibly after the

trial of the fire-eating Lord CARDIGAN (1841, 4 St. Tr. N.S. 602) for feloniously wounding "HARVEY TUCKETT" in a duel. His victim's name being HARVEY GARNETT PHIPPS TUCKETT, he was acquitted by his Peers on the flaw in the indictment. Fortunately, however, we are a peace-loving people, and even injured husbands are content to take their cheques from co-respondents. In respect of the present affray, if it was merely child's play the University authorities were no doubt competent to deal with it. And it seems almost a pity that the birch-rod is obsolete at Oxford, since the fines imposed will not trouble these wealthy young men.

The Channel Hoax Once More.

MOST PEOPLE will be glad that Dr. LOGAN has not been struck off the medical register. She has been sufficiently punished for her criminal levity in making a false statutory declaration by the very substantial penalty put upon her in the police court, and by the public opprobrium she has incurred. There was probably a good deal in what she said that she did not appreciate the full significance of what she was doing when signing the declaration, but a professional woman cannot expect to make a public exhibition of folly without suffering in reputation and pocket. We share the belief of the General Medical Council that this lady will, in future, rise above playing with the truth and be a worthy member of her profession. The incident is now one to be forgotten, save as an odd psychological aberration to which no individual's name need be attached. We all have our mad moments, but fortunately for ourselves, though less happily for the entertainment of our fellows, most of us suppress our crazy impulse in time.

Petrol-Electric Vehicles.

AN IMPORTANT point came before CLAUSON, J., in the case of *Tilling Stevens Motors Ltd.* v. *Kent County Council and the Minister of Transport*, 72 SOL. J. 353, where the plaintiffs sought a declaration that a petrol-electric vehicle of their make, which the defendant county council had refused to license and other vehicles like it, were "electrically propelled" vehicles within cl. 5 of the First Schedule to the Finance Act, 1926. It appeared that the vehicle in question was one in which electricity used in an electric motor to drive the back wheels was generated by a petrol engine and an electric generator. The petrol motor communicated, not through the gear box with the propeller shaft as in the ordinary motor car or lorry, but with the dynamo, and, through the dynamo, with the electric motor; and the electric motor operated by reason of the electricity which had been generated by reason of the working of the petrol motor and the dynamo; and the electricity, so fed into the motor worked the wheels—to use a popular expression. His lordship held that the plaintiffs were entitled to the declaration which they sought, and in giving judgment said that the vehicle came within the category of "electrically propelled" vehicles, for its wheels revolved owing to the action of an electric motor. He pointed out that whilst everybody would agree that the ordinary car or motor lorry in which the petrol motor communicated direct through the gear box with the propeller shaft and so communicated motion to the rear wheels was not an "electrically propelled" vehicle, even though it were true that, in most types of that vehicle, electricity was used in producing the combustion. We do not think that the draftsman of the Act ever intended that cl. 5 should apply to vehicles other than those driven by electricity generated by a battery or accumulator, or obtained from a cable as in the case of a tram car, and we imagine that in the first Finance Bill in which an amendment of the kind can be introduced, cl. 5 will be so amended as to make vehicles of the kind liable to the higher duty. In the meantime owners of petrol-electric vehicles will be able to effect a substantial saving in the cost of their upkeep.

Registration of Visitors at Hotels.

HOTEL KEEPERS and other persons similarly situated would be well advised to note carefully the important decision of the Divisional Court in *Williams* v. *Jones*, 44 T.L.R. 511, with regard to the registration of visitors. Under Art. 7 (3) of the Aliens Order, 1920, which applies to "any premises whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward" (cf. para. (6)), it is provided that "it shall be the duty (*a*) of every person (whether an alien or not) sleeping at any premises to which the article applies to sign when so required a statement as to his nationality, and, if an alien to furnish and sign a statement of the particulars required under the article; (*b*) of the keeper of any [such] premises (*inter alia*) to require any person who stays at the premises to sign the statement and furnish the particulars required . . ." It was argued in *Williams* v. *Jones* that the keeper of any such premises was not under any obligation, by virtue of the above article, to require persons staying at his premises, *who were known to him to be British subjects* to sign a statement of nationality but the Divisional Court took the view that every person staying at the premises, whether a British subject or not, and whether known to be a British subject or not, must be required by the keeper of the premises to sign a statement of his nationality, and that if the statement showed that the person was not a British subject a further obligation was imposed on the keeper of the premises to furnish the necessary particulars required by the article. This would appear to be, indeed, the only possible construction of para. (*b*) of Art. 7 (3) of the Aliens Order; and the construction put forward by the hotel keeper in *Williams* v. *Jones* must necessarily have had the effect of making the regulation nugatory since in almost every case the hotel keeper would be able to evade his obligations thereunder by stating that he was under the *bona fide* belief that the visitor in question was a British subject. The obligations imposed by the above regulation on the keeper of such premises is made quite clear by the Lord Chief Justice, who said (44 T.L.R. 511, 512): "Every person, whether an alien or not, must sign a statement as to his nationality; when that statement is signed the information, true or false, is given, and if it appears from that information that he is an alien the keeper of the house is in a position to proceed to the second duty, which is to require the particulars that an alien has to furnish." It is important to note also that the above requisitions which the keeper of the premises is required to make must be made at the time of the arrival of the visitor, though AVORY, J., left open the question in *Williams* v. *Jones* whether the making of such requisitions might not be postponed to some other time subsequent to the arrival of the visitor, where the visitor was in fact known to the keeper of the premises to be a British subject.

Copyright in Selection from Non-Copyright Works.

THAT THERE may be copyright in a selection made from non-copyright work appears from the decision of the Privy Council in *Macmillan & Co., Ltd.* v. *Cooper*, 40 T.L.R. 186; 130 L.T.R. 675. In that case it was held that a work which consisted of a selection of passages from a work, which did not enjoy any copyright, might be entitled to copyright, if the selection necessitated accurate scientific knowledge, sound judgment, and literary skill, and the law on the point will be found clearly stated in Lord ATKINSON'S judgment. Thus Lord ATKINSON said (40 T.L.R., at p. 187): "The learned judges in the appellate jurisdiction apparently came to the conclusion that a publication, the text of which consisted merely of a reprint of passages selected from the work of an author could never be entitled to copyright. Their lordships are unable to concur in that view. For instance, it may well be that in selecting and continuing for the use of schools or universities passages of scientific works in which the lines of reasoning are so closely put and proceed with such unbroken continuity that each later proposition depends in a great

degree for its proof or possible appreciation upon what has been laid down or established much earlier in the book, labour, accurate scientific knowledge, sound judgment touching the purpose for which the selection is made, and literary skill would all be needed to effect the object in view. In such a case copyright might well be acquired for the print of the selected passages. The question, however, as to whether any copyright has been acquired in the selection is very much a question of degree" (*ib.*, at p. 190).

Selection by Process of Elimination.

A SIMILAR question as to whether there was copyright in a book consisting of a selection of HAZLITT'S essays was recently considered by MAUGHAM, J., in *Cambridge University Press* v. *University Tutorial Press, Ltd., and Others* (*Times*, 1st May). In this case the plaintiffs had published a book which contained thirteen of HAZLITT'S essays which had been selected by the editor, the work containing in addition a biographical introduction and notes to the text, and the selection was undoubtedly made with skill, taste and literary judgment. Subsequently, in 1926, the defendants published a selection of HAZLITT'S essays, with the object of helping them in their teaching and for the use of London Matriculation students. These essays were twenty-three in number and included twelve or thirteen essays which had been selected for the plaintiffs' work, and contained short notes, sufficient for examination purposes and not as elaborate as those contained in the plaintiffs' work. Mr. Justice MAUGHAM held that there had been no infringement.

In cases of this sort, it is by no means easy to determine whether there has been any infringement, but the ground on which Mr. Justice MAUGHAM'S decision in the above case was based appears to be that the *merit* of the plaintiffs' work *rested more on elimination rather than selection* and included at least four or five essays which were certain of inclusion in any selection of HAZLITT'S essays, and that the defendants' work, on the other hand, included other essays as well (which, moreover, were not arranged in the same manner), contained less elaborate notes, and had been published, not with any desire to profit by the selection of the plaintiffs' work, but with the object of catering for the needs of students entering for certain examinations.

Rates on Tied Houses.

AN INTERESTING point was raised recently before the Stipendiary Magistrate, when the Aberdare Urban District Council claimed (1) £149 2s. from the licensee, and from Worthington and Company, Limited, as mortgagees of the "Plough Inn," Aberaman; (2) £178 from the licensee, and from the Rhondda Valley and Ely Breweries, Limited, in respect of the "Mount Pleasant Hotel," Cwmaman. The evidence on which the rating authority claimed against the brewery company in the first case was that they were the owners of landlords' and tenant's trade fixtures on the premises under a mortgage of 16th February, 1922, and that they enjoyed the exclusive right to sell beer to the licensee. The learned magistrate regarded the proceedings as being in the nature of an experiment under the Rating and Valuation Act, 1925, but he was not aware of any authority for the proposition that a person became liable for rates by the mere fact of owning chattels in a house of which another person was tenant. Neither could he uphold the contention that the tied-house system renders a brewery company a beneficial occupier. The evidence did not satisfy him that during the period covered by the rate the brewery company were rateable occupiers of the "Plough Inn," either in fact or in law. They were not affected by an alteration in the rate book made in March last by the council's rating officer. As the defendants were jointly summoned, he was unable to make a separate order against the licensee, and therefore dismissed the summons against both. Having come to the same conclusion with regard to the "Mount Pleasant Hotel," the learned magistrate held that the Rhondda Valley and Ely Breweries, Limited, were not a rateable occupier. He therefore dismissed that summons also, but agreed to state cases.

Friendly Societies and Endowment Policies.

THE ABOVE subject was recently considered at Merthyr on a prosecution under the Friendly Societies Act, 1896, s. 84. Sec. 62 of that Act, as re-enacted by the Act of 1924, s. 2 (1), provides that the amount payable on the death of a child between six and ten years of age shall not exceed £15. In 1920 the City of Glasgow Friendly Society had issued to a Mr. S. an endowment policy for his daughter born in 1919. In consideration of a weekly premium of 2s. the society agreed to pay £128 if the life survived twenty years, or to return 90 per cent. of the premiums on prior death. No premium had been paid since 1st June, 1925, and if the child had then died the percentage returnable would have been about £23. The case for the prosecution was that the child's life was insured for that amount, but for the defence it was pointed out that (1) the companies had conducted this class of business for thirty years, (2) the Chief Registrar of Friendly Societies had given his opinion, some years ago, that this form of business was permissible, and (3) views had been expressed in Parliament that it was valid. The Stipendiary Magistrate, in a reserved judgment, referred to the following clause in the policy: "In case of death before the endowment is payable 90 per cent. of the contributions will be returned." The defence was that (*a*) this was subsidiary to the main purpose of the policy, (*b*) there was no contract of insurance, (*c*) the repayment would be an act of grace. The questions were: (1) Had the society incurred a legal obligation to pay money on the child's death? (2) Was that sum in excess of the minimum, viz., £15 for a child over six and under ten? He held that the policy was partly an insurance on death, and by agreeing to pay over £23 on the death of a child born in 1919, the society had committed an offence under the Act. A fine of £5 was imposed, and the learned magistrate agreed to state a case.

Sending Indecent Prints by Post.

THE ABOVE is an offence under the Post Office Act, 1908, s. 63, but at the defendant's premises there will often merely be found (on search warrant) the paraphernalia of drawing boards, busts of Venus, and boxes of paints necessary to an artists' provider, and the evidence will have to be sought only in the postal communications. It will, in many cases, be discovered that the offensive matter came, not from the defendant's address in England, but from somewhere abroad—with a foreign stamp and postmark. His explanation to the police is that he is ignorant of the whole affair, and is not responsible for the obvious mistake. The question then arises whether this has always been his attitude. A genuine art student may have written expostulating at the character of the pictures received. It is important to observe whether the defendant replied expressing horror and dismay, or whether he merely promised to send studies less "exclusive"—or "advanced." Guilty knowledge may also be shown by the fact that while an advertisement specifies the defendant's English address, the objectionable matter comes from abroad, but that correspondence with reference thereto is conducted from the English address. Evidence of indecency may be inferred from the price. Samples on first application may possibly be had for a shilling, and these will often prove to be merely daring. The next price, quoted for "studies not readily obtainable elsewhere," may be as high as 10s. for half a dozen. Inasmuch as the cost of a photograph is the same, the only consideration for the exorbitant charge must be the indecency. A favourite method of cross-examining prosecution witnesses is to hand up medical books, or those illustrating Armenian atrocities, and to ask how they differ from those the subject of the charge. For re-examination books of artistic anatomy should be available, in which the details of purely medical interest are omitted from the illustrations.

Construction of a Charter-Party.

IMPORTANT POINTS of commercial law, arising out of the construction of a charter-party, were determined by WRIGHT, J., in *Compagnie Continentale d'Importation* v. *Handelsvertretung der Union der S.S.R. in Deutschland*. In this case a contract for the sale of 6,000 tons of wheat had been entered into, one of the conditions of the contract being in the following terms :—

> "Notice of appropriation with ship's name, date of bill or bills of lading, and approximate quantity loaded shall be given by the shipper of the grain tendered under this contract direct or through his house or representative or agent in London to his buyer within seven days from date of bill of lading and by each other seller within the seven days, or in due course if received by him after that time . . . Provisional invoice based on bill of lading weight with ship's name and date of bill or bills of lading shall be sent by shipper's house or representative in London to his buyer within three business days after arrival of documents in London . . "

The bills of lading were dated the 30th December, 1926, so that under the above condition notice of appropriation had to be given not later than the 6th January, 1927, inclusive. On the 4th January, 1927, the seller telegraphed to the buyers and confirmed the telegram by letter, but the date of the bill of lading was not stated. On 6th January the buyers wrote in reply that they could not accept the communication as notice of appropriation, as the date of the bill of lading was not stated. On the same date the sellers forwarded a provisional invoice which gave, *inter alia*, the date of the bill of lading, and which was received by the buyers on 7th January. The main questions that were raised in this case were, firstly, whether a provisional invoice might be regarded as a notice of appropriation, or whether the invoice and the notice were in effect two entirely separate and distinct documents, and, secondly, whether the word "given" meant "despatched" merely and not necessarily "received." According to mercantile custom a "notice of appropriation" and a "provisional invoice" are regarded as separate documents, so that a "provisional invoice" cannot be regarded as a "notice of appropriation," and what apparently the court was in effect being asked to decide was that such a custom should receive legal recognition, and that it should be incorporated into the particular contract. Mr. Justice WRIGHT took the view that such a custom was not unreasonable and should therefore be regarded as valid in law, and the learned judge further held that there was nothing on the particular contract which was inconsistent with the custom, and that, therefore, it was to be regarded as having been incorporated therein. With regard to the further point, that in any view of the case notice of appropriation had not been given within the stipulated time, inasmuch as the provisional invoice, even assuming that it might have been treated as a notice of appropriation, was not received by the seller until the 7th day of January, 1927, though that it may have been despatched in time, Mr. Justice WRIGHT held that the word "given" was to be construed as equivalent to "caused to be received," and based his decision on the fact that it was an essential feature of the contract that the buyer should have information of the grain tendered to him under the contract, as soon as possible, so that it was incumbent on the seller to see that such information was actually conveyed to the buyer within the contract time. Two important principles may therefore be deduced from this case, viz., that the mercantile custom, whereby a "notice of appropriation" is regarded as separate and distinct from a "provisional invoice," is a legally recognised custom, and that it will be incorporated into a contract if the terms thereof are not inconsistent therewith ; and (2) that where a contract of sale requires a notice of appropriation to be "given" to the buyer within a stipulated time, it is incumbent on the seller to see that such notice is not only despatched but is actually received by the buyer within the contract time.

Collateral Defeasance of Bill of Sale.

THE Court of Appeal have recently considered this subject in *Stott* v. *Shaw and Lee Limited*, 1928, W.N. 79. The history of the case contains two persons named STOTT—one the testator, and the other his executor. In 1910 the testator, STOTT, sold some land at Flixton, Lancs, to THORNLEY, and also advanced some money with which THORNLEY built a laundry on the land. By 1913 STOTT had advanced £1,000, his security being a mortgage on the land and laundry buildings, and a bill of sale on the plant. In June, 1925, STOTT paid another £600 to one of THORNLEY'S creditors, it being agreed that THORNLEY should secure his total indebtedness of £1,600 by means of (1) a new mortgage ; (2) a new bill of sale. These documents were accordingly executed on 1st July, 1925, and the mortgage contained the usual covenant for repayment of the principal (£1,600) with interest on 24th December, 1925, i.e., slightly less than six months. Subject to the mortgagee's right to require repayment on that date, or at any time thereafter, the mortgage contained a further proviso for repayment by instalments of not less than £20 every quarter, starting at 24th September, 1926. The contemporaneous bill of sale merely provided for the repayment of £1,600, with interest on 24th December, 1925, and did not mention instalments. The testator STOTT died on 10th December, 1926, and on 21st January, 1927, a judgment was obtained against THORNLEY in the Manchester District Registry for over £157. The executor, STOTT, claimed the laundry plant from the sheriff, who interpleaded. In February, 1927, the proceedings were transferred to Salford County Court, and the executor, STOTT (with his co-executor), was made plaintiff, and the execution creditors, SHAW AND LEE LIMITED, were made defendants. In June, 1927, the county court judge gave judgment for the plaintiff, and in December, 1927, the judgment was upheld by Mr. Justice SHEARMAN and Mr. Justice FINLAY in the Divisional Court. The defendants appealed further on the ground that the bill of sale was made or given subject to a defeasance or condition not contained in the body thereof, so that the registration was void under the Bills of Sale Act, 1878, s. 10 (3), as the bill of sale specified a definite date for repayment, while the contemporaneous mortgage allowed for instalment repayments, subject to the mortgagee's right to require a definite date. The Court of Appeal (Lords Justices SCRUTTON and SANKEY and Mr. Justice TOMLIN) held that the personal covenant in the bill of sale was not affected by the fact that the mortgage contained an instalment clause. The latter was not a defeasance or condition, and therefore its omission did not render the bill of sale void.

A similar decision had been given in *In re Leber*, 1908, 52 SOL. J. 483, on a motion by a trustee in bankruptcy to set aside a bill of sale for £1,000 in favour of MEYE. In this case it was the bill of sale which provided for repayment by instalments, the contemporaneous mortgage being silent on the matter. The important covenant in the mortgage, however, was one by the mortgagor to keep the premises in repair, in default of which the mortgagee was empowered (*a*) to enter upon the premises ; (*b*) to put them to repair ; (*c*) to add the cost of the repairs to his loan. The trustee contended that this was a defeasance or condition under the above section, which ought to have been contained in the body of the bill of sale, or written on the same paper with it before registration The reason alleged was that the mortgage contained conditions, such as the proviso for repairs, which were inconsistent with the bill of sale, and that the latter did not contain the whole agreement between the parties. Lord MERSEY (then Mr. Justice Bigham) pointed out that the provisos for repayment in the bill and mortgage were identical. It was impossible to hold that the proviso for repairs was in any way a defeasance or condition of the bill of sale. If the bankrupt had paid

all the instalments under the bill, he would have got full quittance of his debt, and full discharge for his chattels. The application was therefore dismissed.

A ground of appeal in the first case above (but one which was not argued) had been that the bill of sale did not truly set forth the consideration, and was therefore void, since it stated that the consideration was £1,600, paid on 24th June, 1925, though in fact only £600 had been paid on that date. The Divisional Court had already decided, following *Credit Co.* v. *Pott*, 1880, 6 Q.B.D. 295, that if the bill of sale stated the consideration with substantial accuracy, according to its legal and business effect, the consideration was truly stated within the meaning of the Act.

A Conveyancer's Diary.

The Statute of Uses and the Settled Land Act, 1925.

In the April number of the "Law Quarterly Review" (pp. 227-234), Mr. Harold Potter lays down, and then proceeds to illustrate, the novel proposition that "from external sources it would appear that the draftsman had very much in mind the old machinery of uses when he drafted the provisions of the Settled Land Act, 1925." The novelty of the proposition naturally attracted a conveyancer's attention to the article, but only to find that, unfortunately, it bristles with obscure statements and false analogies. It may be as well, therefore, that some of the statements made by Mr. Potter should be re-examined, and some of the impressions that may have been conveyed to the readers of the article dispelled.

"The successive equitable interests," we are told, "which give rise to a settlement are to receive effect through a succession of legal estates which, on the surface, appear to defy the statute *Quia Emptores*, and, . . . would do so, except that, as in the case of uses, it is not really a fee simple upon a fee simple, but the same fee simple transmitted from one beneficiary to the other by the mediation of an external source." The reference to a defiance of the Statute of *Quia Emptores* cannot possibly bear examination, since there cannot be any question of sub-infeudation as respects the indivisible post-1925 legal estate.

The "external source" which transmits the fee simple from one beneficiary to the other is described as "merely forming 'the conduit pipe' only less passive in its operation than was the old 'seisinee to uses.'" Surely that is a false analogy? Sufficient distinction was made, under the old law, between the case of "the passive use" and "the active trust" to defeat, in one direction, the whole object of the Statute of Uses, for if the grantee had active duties to perform the "use" was not necessarily executed: *Baker* v. *White*, L.R. 20 Eq. 166. But now the special personal representatives of a deceased tenant for life are not only responsible for death duties, but have to convey, by some instrument in writing, such as an assent, to the person next entitled to the settled land. How a chain of conveyances of the legal estate from one estate owner to another can be legitimately compared with the automatic shifting of the legal estate from a tenant for life to his successor, whether or not with the aid of the Statute of Uses, passes the wit of man to follow. A more dissimilar process cannot well be imagined; certainly no "conduit pipe" is employed.

It may be that Mr. Potter had in mind the new principle under which a tenant for life has an inalienable right to act as the trustee of the legal estate in the settled land; but if so, his method of expressing this principle tends to obscure rather than elucidate it.

The apparent purpose of the S.L.A., 1925, is described as being "to prevent the continuance of the simple [presumably 'bare'] trust"; it is suggested, on the authority of *Re Frewen*, 1926, Ch. 580 (he gives 985 as the page), that the courts would be prepared to restrict the slaughter of "simple" trustees or are at least anxious to preserve trustees of land with active duties independently of the tenant for life. But why? *Re Frewen* is merely an authority that, in the absence of a tenant for life, the S.L.A. trustees become, as was clearly intended by the Act, the statutory owners. Why should the court be expected to place a strained meaning on s. 20 (1) (viii) when under s. 23 the trustees were available for the purposes of the Act? It is interesting to note that the writer of "A Conveyancer's Letter" in the current number of the "Law Journal" (p. 432), cautiously suggests that Mr. Potter is wrong in his statement of the effect of *Re Frewen*.

On a misconception of the effect of *Re Frewen*, Mr. Potter bases his main contention, namely, "that as the Statute of Uses failed to prevent the continuance of trusts, so has the Settled Land Act, 1925, failed to prevent a settlor from creating a trust which can maintain the land intact as the trust fund without its being liable to be sold under a trust for sale or the powers under the Settled Land Act."

He suggests a scheme to effect such a settlement, though he does not attempt "a discussion either of the advisability or the advantages or disadvantages of such a trust." The scheme consists of the following parts:—

(*a*) The creation of such beneficial interests as do not entitle the beneficiaries to S.L.A. powers under ss. 19 and 20 of the Act;

(*b*) The appointment of trustees who—

(i) are given express powers of sale and management,

(ii) have contracted not to exercise their powers as statutory owners,

(iii) release their statutory powers, relying on *Re Craven's S.E.*, 1926.

Let us consider these suggestions. First, there can be no great difficulty in making a settlement without creating a tenant for life; thus a discretionary trust is sufficient for this purpose, though whether such a trust may give effect to the intention of the parties is another matter.

Assuming, however, that there is no tenant for life, then the powers are exercisable under s. 23 by the statutory owners.

Mr. Potter first suggests that they should contract not to exercise their statutory powers, but this would be a case of refusing to act, the result would merely be that other trustees would be appointed in their place who would act.

Next he says that they should release their statutory powers, but he apparently forgets that a power, coupled with a duty, cannot be released under L.P.A., 1925, s. 155. This section was properly relied upon in *Re Craven*, because the powers had been given to a stranger, who was not a Settled Land Act trustee. He was able to release in order that the powers might be exercised by the S.L.A. trustees. No court has ever held that S.L.A. trustees can release the powers given to them as statutory owners. If such an unlikely decision ever appeared on the books it would be time for the Legislature to intervene.

Mr. Potter's retrograde suggestion that the profession should revert to the practice of conferring on trustees express powers of sale and management would lead one to think that he had ignored ss. 108 and 109 of the S.L.A., 1925.

FOREIGN CORPORATIONS ORDINANCE IN STRAITS SETTLEMENTS.

A Bill is about to be introduced into the Straits Settlements Legislative Council to make provision with regard to the execution of instruments under seal by the agents of certain foreign corporations. It is pointed out among the "Objects and Reasons" that there are many foreign States, the laws of which do not require corporations incorporated therein to possess and use a common seal. A power of attorney or document of authorisation given by such a corporation, therefore, is not under seal, and instruments under seal executed on behalf of such a corporation under such a document are by the law of the Colony not valid. The object of the Bill is to validate them.

Landlord and Tenant Notebook.

Effect of Non-occupation by Tenant.

The question whether a landlord is entitled to an order for possession against a tenant of premises, within the Rent Restrictions Acts, whose contractual tenancy has been determined, where the premises are not in the occupation of the tenant, but in the occupation of a sub-tenant to whom they have been lawfully sub-let, was considered in *West Wales Joint Board etc.* v. *Evans and another*, 44 L.T.R. 565.

In such cases, of course, it is out of the question for any order for possession to be made against the sub-tenant where the sub-letting has been created lawfully and not in breach of covenant, and while the original tenant was still a contractual tenant, the sub-tenant being protected by s. 4 "5" (5) of the Rent Act, 1923, which provides that where an order for possession has been made against a tenant the right of any sub-tenant, to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under (s. 4) shall not be affected thereby; and moreover by reason of the decision of the Court of Appeal in *Roe* v. *Russell*, to the effect that a statutory tenant has the right to sub-let, no order for possession could be obtained in such circumstances against the sub-tenant even where the sub-tenancy was created at a time when the original tenant was merely a statutory tenant of the premises.

The position of the non-occupying tenant, however, is not quite so clear, and the authorities are conflicting. With the exception of *Hicks* v. *Scarsdale Brewery Co.*, 1924, W.N. 189, the subsequent authorities are in favour of the view that the statutory tenant is equally entitled to protection, although he is not in occupation of the premises personally, and that in consequence no order for possession can be made against him: *Gidden* v. *Mills*, 1925, 2 K.B. 713.

From the judgment of Mr. Justice Salter in *West Wales etc.* v. *Evans*, *supra*, it would appear that the argument that no order for possession can be made against a non-occupying tenant where there is no default under s. 4 of the Act of 1923, is based on the fact that s. 4 "5" (5), expressly contemplates a sub-tenant being in occupation of the whole of the premises, so that s. 4 "5" (1) of the Act is to be construed as if it impliedly protected the non-occupying tenant, as well, against an order for possession, where no default had been made under that section and where the premises were in fact being occupied by a person lawfully entitled to be there (i.e., the sub-tenant). Where any default is made by the statutory tenant under any one or more of the paragraphs in s. 4, an order for possession may be made against the statutory tenant, but not against any sub-tenant lawfully holding under him.

The proceedings in the *West Wales* case were taken under s. 138 of the County Court Act, 1888, against both the tenant and the sub-tenant, that section being appropriate where possession is claimed on the ground that the tenancy has expired or been determined by notice, and the tenant has neglected or refused to deliver up possession; but as Mr. Justice Salter pointed out, the tenant could not be regarded as having neglected or refused to deliver up possession where the premises were occupied by a person (i.e., the sub-tenant), who had a statutory right to possession, so that the tenant had no lawful right to claim possession himself. It is difficult to see, however, under what section of the County Courts Act proceedings for recovery of possession could be otherwise taken against a non-occupying tenant, who had been guilty of breaches under any of the paragraphs in s. 4 "5" (1) of the Act.

Lastly, the effect of acceptance of rent was referred to by Mr. Justice Salter, and there can be no doubt, as the learned judge pointed out, that a landlord who contends that the Rent Restrictions Acts do not apply at all to any given case, will put himself out of court by accepting rent from the tenant, to whom he alleges the Acts do not apply, subsequently to the determination of the tenancy, the effect of such acceptance being to create in most cases a new yearly tenancy.

Our County Court Letter.

EFFECT OF APPOINTMENT OF DEBTOR AS EXECUTOR BY CREDITOR.

THE decision of the Divisional Court in *Jenkins* v. *Jenkins*, 44 T.L.R. 483, is an extremely interesting one, because the court applied in that case principles of long-standing, some of which may be traced as far back as the reign of EDWARD IV.

The question which the court had to determine in this case was the effect of the appointment of one of the makers of a promissory note, as executor of the payee of the note, the material facts being as follows: The plaintiff, together with the defendant and two other persons made a promissory note by which they jointly and severally promised to pay one ELLIOTT the sum of £100. ELLIOTT appointed the plaintiff the executor of his will, and on his death probate of the will was granted to the plaintiff, and neither at the time of the death of the testator nor at the time of the grant of the probate to the plaintiff had the note been discharged at all by actual payment. The plaintiff thereupon sued the defendant on the note, in his capacity as executor, but the Divisional Court, reversing the learned county court judge, held that the defendant was not liable. The grounds on which this judgment is based will be found to be most instructive, and for this purpose one must examine the rules both of Common Law and Equity.

At Common Law where several persons are bound to another in an obligation jointly and severally, and the obligee makes one of the obligors his executor and dies the obligation is entirely discharged as regards *all* the obligors on the death of the obligee, and the obligation being entirely discharged none of the obligors can have any right and action against the others: *Cheetham* v. *Ward*, 1 Bos. & P. 630, at p. 632. According to this principle therefore the plaintiff was precluded at Common Law from suing the defendant, who was a co-maker of the note.

But the rules of Equity were different. The obligor in such circumstances was not entirely released and would be held liable on the obligation, if the interests of the creditors of the testator required it, unless it could be shown that the testator intended to release the obligor from the obligation; but on the other hand when the obligor had been granted probate of the will, equity regarded him as having paid the debt to himself in his capacity as executor (cf. *Davey* v. *Bourne*, 1906, 1 Ch. 697). In Equity therefore the promissory note in *Jenkins* v. *Jenkins* would be regarded as having been already paid to the estate of the testator by the plaintiff, the executor, on the grant of probate, so that the liability of the makers of the note to the estate of the deceased payee would be regarded as being discharged. The plaintiff therefore would have no right of action as executor against the other makers of the note. Applying these principles to the facts in *Jenkins* v. *Jenkins*, *supra*, the Divisional Court held that the debt had ceased to exist before action brought, and that the action was not maintainable.

HOUSE PURCHASE BY POLICY-HOLDERS.

The advances made to policy-holders of the Mutual Property Insurance Co. Ltd. for the purchase of house and house-and-shop property now exceed £1,500,000. Such progress has been made possible on account of the favourable way in which the "M.P." contract has been received by the public, and proves that the plan the company is offering is one which appeals to and is appreciated by the people.

Practice Notes.

DIVORCE.

OCCASIONALLY practitioners are confronted with problems like this: A client wants to know whether he can obtain a decree of dissolution in the following circumstances. The client having found after several trials that his wife is incurably a "loose" woman, left her many years ago in consequence, but has taken no steps to obtain a divorce. In the subsequent years the client has sent his wife money from time to time, but has himself regularly but at comparatively long intervals committed adultery with women of the town. The wife is continuing her "loose" mode of life and evidence of fresh adultery is easily procurable. The client is now desirous of marrying again and wants a divorce. In the first place the practitioner must advise the client that if he obtains a decree it will be a discretionary one, because the client must disclose his own adultery to the court. Now is the court going to excuse a petitioner's adultery in the circumstances? Firstly, that is doubtful—the adultery was deliberate and extended regularly over a long period. On the other hand such conduct with promiscuous women is not unnatural in the circumstances. The second factor to consider is the attitude of the wife, if divorce proceedings are taken. There are several pleas she can raise, for instance, delay, and if she is unscrupulous, connivance, and the petitioner's conduct may be put in so unfavourable a light on cross-examination that the court will be disinclined to exercise its discretion. A contested suit is therefore to be avoided. The wife's only practical interest in contesting the suit would be to obtain monetary provision for herself of some kind, perhaps in the shape of a "compassionate" allowance, and it is suggested that in a situation like this it might be expedient to enter into what is known as a "deed" with a *Rose* v. *Rose* clause, with a view to founding a petition thereafter on the probable future adultery of the wife. Such a deed operates as a final condonation of all matrimonial offences of the parties prior to the deed, and in subsequent proceedings neither party may plead them. The wording of the deed in *Rose* v. *Rose*, 7 P.D. 225, 8 P.D. 98, C.A., must be faithfully followed, or protection will not be achieved, as happened in *Gooch* v. *Gooch*, 1893, P. 99. The operative clause is as follows: "No proceedings shall be commenced or prosecuted by or on behalf of either party against the other in respect of any cause of complaint which now exists, or which has arisen before the date of these presents, and every offence, which has been committed or permitted by either party against the other shall be considered as hereby forgiven and condoned, and in case hereafter either shall commence or prosecute any proceedings against the other in respect of any cause of complaint which may hereafter arise, no offence or misconduct which has been committed or permitted before the execution of these presents, and no act, deed, neglect, or default of either party in relation to any such offence or misconduct, shall be pleaded or alleged by either party or shall be admissible in evidence."

Before the 1923 Act it was rarely expedient to employ such a deed in acting for a wife, because it would have precluded the availability of a second matrimonial offence, e.g., cruelty or desertion for two years and upwards prior to the deed, to found a decree of dissolution in the future. Without the deed in those terms subsequent adultery of the husband would have revived condoned cruelty or desertion.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

Obituary.

MR. L. C. MARGETTS.

Mr. Lionel Clarke Margetts, solicitor, died at his residence, London-road, Chatteris, on the 20th ult., at the comparatively early age of forty-three. A member of a very old legal family, he was the son of Mr. Alan C. Margetts (the senior member of the firm of Alan C. & L. C. Margetts), was educated at Grantham Grammar School, and subsequently articled to his father, being admitted in 1907. After passing two years in a London office, he joined the firm as a partner. He subsequently acted for some time as Deputy Clerk to the Justices of the North Witchford Division and succeeded his father as Clerk a little later. During the Great War he served as a Lieutenant in the Home Defence Corps. His principal recreations were reading and cycling, and when quite young often accompanied his father on long rides into different parts of the country. He had been in failing health for some time, and although last year he took a long holiday for the purpose of recruiting his health, he gradually grew weaker and the end came peacefully on Sunday morning.

MR. HUGH ADAMS.

Mr. Hugh Adams, solicitor, who died at his residence, Orchard Poyle, Taplow, on the 18th ult., after a long illness, was a member of the firm of Williams & James, Norfolk-house, Embankment, London, W.C.2. He was educated at Marlborough, and was articled in the firm of Messrs. Janson, Cobb and Pearson. He was admitted in 1889, and after filling an appointment in the office of the late Mr. Aldridge, the Official Solicitor in Bankruptcy, started to practise in partnership with his brother, the present Sir John Coode-Adams, in New-court, Carey-street, under the style of Adams & Adams. In 1923 that firm was amalgamated with Messrs. Williams & James. Mr. Adams married Margaret Mary Evelyn, daughter of the late Stephen Prust Wills, formerly of Keynsham, Somerset, who survives him.

SIR JOHN HENRY HOSKING.

The Hon. Sir John Henry Hosking, Judge of the Supreme Court, Wellington, New Zealand, from 1914 to 1925, died at his residence, Sefton-street, Highland Park, Wadestown, Wellington, on Wednesday, the 30th ult. Born at Penzance in 1854, he was taken by his parents to Auckland when only two years old. He became a barrister and solicitor in 1875, and took silk in 1907. He received the honour of knighthood on retirement from the Bench, and did most useful work as Chairman of the War Pensions Appeal Board. H.

Reviews.

Death Duties, with special reference to Settled Land. By J. P. CLEARY, LL.D. (Examiner, Estate Duty Office). London: Butterworth & Co. (Publishers) Ltd. 1928. xxv, 246 and [22] pp. 12s. 6d. net.

Dr. Cleary in this volume makes a valuable contribution to the literature explaining the rules, principles and practice relating to death duties. The work, as the author admits, is somewhat technical in character, but that seems inevitable having regard to the nature of the subject dealt with it, and the concentration of attention upon a somewhat narrow field, namely, the death duties payable in respect of settled land. The chapters dealing with the more technical branches of the subject seem to be particularly good, but therere a several loose statements and slips in the first chapter in which the author explains the general law as to settlements. Thus, on p. 12, it is said that until a vesting deed is executed "no dealings with the property can take place"; but see *Re Alefounder*, 71 SOL. J. 123; and a few lines lower on the same page the tenant for life is stated to have been given by the

S.L.A., 1925 (subject to his equitable obligation to give effect to the interests of beneficiaries), "the powers of an absolute owner." There is a curious description on p. 15 of the effect of *Re Bridgett & Hayes*, namely, that if the remainderman upon the death of a tenant for life is absolutely entitled, "he takes the property" automatically, and "no settled land grant is required to the tenant for life." Another peculiar statement is made on p. 17, namely, that the scheme of the Act [presumably the L.R. Act, 1925, is meant] absorbs gradually the present Middlesex and Yorkshire registers." But these slips occur only in the first chapter, and only affect matters collateral to the main body of the work. That main part contains much instructive and useful information that is difficult if not impossible for the practitioner to obtain elsewhere.

Les Contrats de la London Corn Trade Association (Vente C.A.F.). By GEORGES SCHWOB. Paris: Rousseau et Cie. 1928.

The standard forms of the L.C.T.A. are, of course, well known on this side of the Channel, but it is somewhat startling to find that a French legal author has thought it worth his while to devote 400 pages of print to a consideration of the legal characteristics of these documents. The explanation of this lies in the fact that the forms are widely used in the grain trade in France, and are frequently in issue in litigation before the French courts. M. Schwob's monograph is of great interest to an English lawyer. He points out that in construing the standard L.C.T.A. form of contract the English and French courts have arrived at conclusions which are practically identical. He quite rightly stresses the benefits which accrue to international commerce from the use of standard forms, in spite of the fact that a misunderstanding of English business phraseology has often led to complications when the forms are used in France. He suggests that a remedy could be found in the revision of the forms by international agreement, but it is doubtful whether this is feasible in view of the fact that it is sometimes impossible to find an exact equivalent in a continental language for our English trade terms. But in any case, the experiment would be highly interesting.

The Rating and Valuation Act, 1925. By ROBERT W. LEACH, Barrister-at-Law, Northern Circuit. 2nd Edition. London: Law & Local Government Publications, Ltd., 27, 29, Furnival-street, E.C.4. Price 25s.

In the preparation of the second edition of this work advantage has been taken of the opportunity to re-cast the introduction and notes to the first edition, and to include all the statutory rules and orders, circular letters and the representations of the Central Valuation Committee, issued prior to September, 1927.

There is a good introduction and the notes are practical and helpful, though it would have facilitated reference if the pages where the various orders, etc., are to be found had been inserted, and sub-headings and better tabulation would have been an advantage. These, however, are matters of individual taste, and do not materially affect its usefulness as a valuable guide to these involved branches of law. H.

Books Received.

A Common-sense View of Religion. By a Business Man. Foolscap 8vo. 61 pp. 1928. The Psychic Press, 2, Victoria-street, London, S.W.1. 1s. net.

Public Health Law. Being a manual for Town Clerks, Clerks to District Councils, Municipal and County Engineers and Surveyors and other Officers and Members of Local Authorities. SYDNEY G. TURNER, Barrister-at-law. Second edition by JOHN HODSON, B.A., LL.B., Barrister-at-law. 1928. Demy 8vo, pp. xlviii and 237, with Index, St. Bride's Press Ltd., 14 Bride-lane, Fleet-street, E.C.4. 15s. net.

A Guide to the Unemployment Insurance Acts. Revised and enlarged edition. H. C. EMMERSON and E. C. P. LASCELLES, O.B.E., Barrister-at-Law. 1928. Crown 8vo. pp. x and 244 (with Index). London: Longmans Green & Co. Ltd., 39, Paternoster-row, E.C.4. New York, Toronto, Calcutta, Bombay and Madras. Cloth, 5s. net; paper, 4s. net.

Supplement to The Landlord and Tenant Act, 1927. S. P. J. MERLIN, Barrister-at-Law. Containing the Statutory Rules and Orders of the High Court and County Court and the Prescribed Forms. 36 pp. London: Waterlow & Sons, Ltd., London Wall. 1s. net.

The Constitution of Northern Ireland. Sir ARTHUR S. QUEKETT, K.C., LL.D. 1928. Part I. The Origin and Development of the Constitution. Demy 8vo, cloth, 88 pp., with Index. H.M. Stationery Office, 15 Donegall-square, West Belfast. 3s. 6d. net.

Isalpa. The monthly journal of The Incorporated Society of Auctioneers and Landed Property Agents. Vol. II, No. 17, May 1928. Published at 26A, Finsbury-square, E.C.2. Subscription Rates (to non-members) 3s. 6d. post free.

The Incorporated Accountants' Journal. Vol. XXXIX, No. 8, May 1928. The Official Organ of The Society of Incorporated Accountants and Auditors, 50, Gresham-street, E.C.2. 12s. 6d. per annum (post free).

The Landlord and Tenant Act, 1927, with Introduction, Rules, Forms and Notes. A handbook on the Act prepared at the request of the Surveyors' Institution. EDGAR FOÀ, M.A., Barrister-at-Law. Large Crown 8vo. 1928. pp. ix and 130 (with Index). Jordan & Sons, Ltd., 116/118, Chancery-lane, W.C. 7s. 6d. net.

General Average Law and Rules. An Introductory Handbook on the York-Antwerp Rules, 1924. 1928. SANDFORD D. COLE, Barrister-at-Law. Author of "The Hague Rules Explained," etc. Crown 8vo. pp. x and 104 (with Index). Effingham Wilson, 16, Copthall-avenue, E.C.2. 4s. net.

The Law of Fixtures. W. T. CRESSWELL, Barrister-at-law. 1928. Large Crown 8vo. pp. xvi and 116 (with Index). The Builder, Ltd., 4, Catherine-street, Aldwych, W.C.2. 6s. net.

Transactions of the Medico-Legal Society for the Session 1926-27. GERALD M. LLOT, M.D., and EVERARD DICKSON, Barrister-at-Law. Vol. XXI. Large Crown 8vo. pp. xxv and 159. W. Heffer & Sons, Ltd., Cambridge.

Bailey's Tables for Immediate Ascertainment of Effective Interest Rates on Amounts Repayable, Principal and Interest, by Instalments. J. W. BATLEY, Incorporated Accountant, 65, Brushfield-street, E.1. 3s. 6d. net.

The Bombay Law Journal. Vol. V, No. 11, April, 1928. G. M. PANDYA. The Maneck Printing Press; Anand Niras Tribhuvan-road, Bombay 4. R. 1.8.0.

Digest of the Cinematograph Films Act, 1927, *and other Legislation.* E. A. GODSON, B.A., (Oxon), Barrister-at-Law. pp. 165 (with Index). 1928. The Cinema Press, Ltd., 80/82, Wardour-street, W.1.

Butterworth's Twentieth Century Statutes (annotated). Vol. XXIV. Containing the Public General Acts, passed in the year 1927, relating to England and Wales. G. E. HART, Solicitor, and ERNEST H. HUNTER, LL.B.(Lond.), Barrister-at-law. Medium 8vo. pp. xiii, 552 and (Index) 18. Butterworth & Co. (Publishers) Ltd. 22s. 6d. net.

The Origin and Nature of the Legal Rights of Spouses and Children in The Scottish Law of Succession. JOHN C. GARDNER, B.L., F.S.A., Scot., Solicitor, with a foreword by E. M. WEDDERBURN, LL.B., D.Sc., Writer to the Signet. 80 pp. 1928. W. Green & Son, Ltd., 2 St. Giles-street, Edinburgh.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Road Charges—UNDERTAKING BY VENDOR TO DISCHARGE.

Q. 1262. A has agreed to sell to B a house and garden in a road which has not been "made up" and therefore not taken over by the local authority "free from all responsibility in respect of the road charges." Is a written undertaking given by the vendor on completion to discharge this liability a sufficient indemnity to the purchaser. If not, what protection should he ask for ?

A. Where a person agrees to purchase a dwelling-house and garden fronting a road which has not been "made up" by the local authority subject to the vendor agreeing to pay the road charges, we do not think a mere undertaking on completion by the vendor is sufficient having regard to the fact that, whilst the amount of the apportionment is a charge on the land, the *personal* liability of the vendor to the local authority ceases on the execution by him of the conveyance, or at the expiration of six months from the date of the "demand," which event first happens. Assuming, therefore, that the road is made up, say, twelve months later, and a "demand" received by the purchaser for the amount of the apportionment, the local authority can and will only look to "the owner" for payment. Under the circumstances an express covenant by the vendor to discharge this liability and to keep the purchaser indemnified in respect of it would be more satisfactory. The possibility, however, of the vendor dying, becoming insolvent or moving out of the district is, of course, by no means remote, in which case there would conceivably be great difficulty in enforcing the covenant. It occurs to us, however, to suggest that the purchaser, or his solicitor, should, before completion, ascertain from the surveyor to the local authority in whose area the property is situate the average cost per foot-run of making up roads of that class (and width) in that neighbourhood, and to deduct the amount, estimated on that basis according to the frontage, from the purchase money at completion, or in the alternative to deposit the amount in the bank in the joint names of the vendor and purchaser until the local authority demand payment.

Possession of Premises within the Rent Acts—ALTERNATIVE ACCOMMODATION.

Q. 1263. In 1892 a block of property, consisting of a house, 11 acres of land and seven cottages was let on yearly tenancy to one, A. A had power to sub-let the cottages. The property now belongs to B, who gave a year's notice to quit to A, expiring on the 25th December, 1927, and A has in fact given up possession of the house and the 11 acres. A has also given the appropriate notice to quit to the cottagers who have not vacated. B requires possession of one or two of the cottages. Is he entitled to obtain an order for possession irrespective of alternative accommodation ?

A. Inasmuch as A had the power to sub-let, and the cottages are not decontrolled, the tenants of the cottages are clearly, on the facts, entitled to the protection of the Rent Restrictions Acts. B's position depends to a great extent on the date when he purchased the property. If B became the owner of the property prior to the 5th May, 1924, he need not provide alternative accommodation, if he can satisfy the court that he requires possession of the premises for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, and that in all the circumstances greater hardships would be caused by refusing to grant, than by granting him possession of the premises, cf. s. 1 of the Prevention of Eviction Act, 1924. If, however, B became the purchaser subsequently to the 5th May, 1924, he will find it much more difficult to obtain possession, and will only be excused from showing the existence of alternative accommodation, in the following three cases, viz. :—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and that employment had ceased ; or

(ii) where the premises are required for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom conditional on housing accommodation being provided, a contract for employment on such work has been entered into ; or

(iii) where the landlord gave up occupation of the dwelling-house in consequence of his service in any of H.M.'s forces during the war, *cf.*, s. 4, 5, (1) of the 1923 Rent Act).

In any case, however the court will have a final discretion in the matter of granting or withholding possession.

Vendor and Purchaser—STAMP ON SATISFIED MORTGAGE —SUFFICIENCY—TITLE.

Q. 1264. Is a purchaser from a vendor, who has previously executed a legal mortgage to a bank which advanced money to him on current account and which has since been reconveyed to the vendor, concerned to enquire if the amount due to the bank at any one time exceeded the amount covered by the stamp, or can he assume that both the mortgage and reconveyance (which latter is stamped to cover the same amount as the mortgage) are duly stamped. It would appear that an adjudication stamp is not applicable to a case of this kind, but as purchaser's solicitors, we have asked for a certificate from the bank manager as to the largest amount at any time secured by the mortgage, but the vendor's solicitor declines to obtain this. Is he within his rights ?

A. The purchaser will obtain a good title if a valid mortgage is paid off and satisfied, but he will obtain an equally good or perhaps even a better one, if the mortgage is void or inadmissible in evidence, for in such case it cannot be used against him. The opinion is therefore given that the sufficiency of the stamp on the mortgage does not affect his title. He is concerned with the stamp on the reconveyance if the mortgage can be put in evidence, but if the mortgage is properly stamped, so also is the reconveyance. There might be a theoretical possibility that the mortgage might be validated by a penalty stamp, in which case the purchaser might have to pay for another on the reconveyance before he could prove that the mortgage no longer affected his property, but the objection would hardly be a defence to an action for specific performance.

Death Duties—ESTATE DUTIES—DEVISE IN FAVOUR OF INFANT—PAYMENT BY PERSONAL REPRESENTATIVES— ADJUSTMENT.

Q. 1265. A testator, who died on the 1st October, 1925, devised his real estate in the Parish of Blackacre to trustees, upon trust to pay the annual income to T.B. and E.B.B. for the education, maintenance, support and advancement in life of their son, T.M.B., until he should attain twenty years, and so soon as he should have attained that age the testator devised the said real estate to the said T.M.B. (the son)

absolutely, subject to his paying an annuity to the said E.B.B. during her life. It was further provided that in case the said T.M.B. should die during testator's lifetime or afterwards without having attained twenty years, the trustees should pay an increased annuity to the said E.B.B. out of the income of the said real estate during her life, and subject thereto it should fall into testator's residuary estate. The said T.M.B. is an infant. The executors have paid the debts, funeral and testamentary expenses and the estate duty on the *whole* of the testator's estate. They have not assented to the devise.

(1) Should the executors raise the proportion of the estate duty attributable to the said real estate, and costs, by a mortgage by themselves as personal representatives, and subsequently execute a vesting assent (subject to the mortgage) vesting the property in themselves as statutory owners in accordance with the S.L.A., 1925, 2nd Sched., para. 2 ?

(2) The executors have funds forming part of the testator's residuary estate available for investment. Is there any objection to the mortgage being executed in favour of a nominee of the executors, who, after the vesting assent, would transfer the mortgage to them with a declaration against merger ?

(3) If there is an objection to this course, is there any method by which they themselves can advance the amount required on the security of the property ?

(4) Would it be preferable for the executors to postpone the assent until the infant attains twenty-one ? In this event, are they entitled to deduct annually from the income of the said real estate interest on the estate duty paid ? If so, at what rate per cent. ?

A. It is suggested that the executors should create a charge in their own favour, by way of legal mortgage on the property the subject of the specific devise, thus avoiding merger (see "Everyday Points in Practice," p. 313, s. 4, case 1) and make the vesting assent in their own favour subject to the charge, see A.E.A., 1925, s. 36 (10). As to the rate of interest, the court has on occasion awarded £4 per cent. as a fair rate, see *re Parker-Jervis*, 1898, 2 Ch. 643, at p. 658 ; *re Beech*, 1920, 1 Ch. 40 ; and *re Baker*, 1924, 2 Ch. 271 ; but money would certainly not be obtained so cheaply in the open market, and it would be fairer to charge 5 per cent. in favour of the persons entitled to the residuary income. See also *re Burley*, W.N. 1917, 115. In accordance with s. 36 (10), *supra*, the assent should not be postponed.

Recovery of Tithe Rent-charge.

Q. 1266. A client of mine purchased freehold land in 1924 and subsequently split the same up into plots and built houses thereon, and sold certain of the houses and plots. She has now had a claim for tithe, and the tithe owner claims on the whole of my client's land, notwithstanding that she has parted with possession of various plots. Must my client pay on the land she originally purchased or only on the land which she now holds ?

A. The client must pay on the land she originally purchased, and should then make a demand in writing for contribution from the other landowners. On refusal to pay, the latter may be summoned before the magistrates under the Tithe Act, 1842, s. 16, as an action in the county court will not lie for an unapportioned sum. An application should be made to the Minister of Agriculture for apportionment of the rent-charge among the present owners of the land.

Intestacy—Succession of Issue of Legitimated Person—Legitimacy Act, 1926, 16 & 17 Geo. 5, c. 60.

Q. 1267. J.B. died on 3rd February, 1928, leaving numerous cousins and descendants of cousins. The sister of J.B.'s mother had an illegitimate child A.K., who died ten years ago leaving two legitimate children G.W.K. and T.K. A.K.'s father married his mother and A.K. was living at the date of the marriage. The question arises as to whether G.W.K. and T.K. are entitled by virtue of the Legitimacy Act, 1926, to share in the estate of J.B. deceased. This appears to be dependent upon the construction of the words "if living," in s. 1 (1) of the Act and the meaning of these words appears to be rather obscure. Section 5 throws some little light on the matter. We do not feel confident as to whether the words refer to (1) the date of the marriage, or (2) the date of the commencement of the Act or the date of the marriage whichever last happens.

A. The opinion here given is, that applying the only reasonable construction of the words of s. 1 (1) as they stand, A.K. would have had to have been living at the date of the commencement of the Act, the event which last happened, for him to have been legitimated under the Act, and upon that construction G.W.K. and T.K. cannot succeed to a share of J.B.'s estate. However, it is submitted that such a result would be inconsistent with other sections of the Act, cf., ss. 2 (1), 3 (1) and 5, and with the probable intention of the legislature. G.W.K. and T.K. would be claiming a declaration that the marriage of their grandparents was a valid one, and had the effect of legitimating their father A.K. Their petition would be presented under the Legitimacy Declaration Act, 1858, *vide* s. 2 (1) of the Legitimacy Act, 1926, and under the former Act such a procedure to determine the validity of the marriage of a petitioner's grandparents is and was commonly resorted to, and the former Act "shall apply accordingly." A possible mode of reconciling the sections of the 1926 Act would be to interpret s. 1 as meaning that the illegitimate person will be rendered, if living, legitimate, or if dead, shall be deemed to be legitimate from the commencement of the Act, but it is submitted that such a construction would be too great a strain upon the language of the section.

Husband and Wife—Desertion—Neglect to Maintain—Time Limit.

Q. 1268. On the 1st March, 1926, A left her husband B on the ground of his persistent cruelty. A took no proceedings under the Summary Jurisdiction (Married Women) Act, 1895, against B, for until recently she was earning sufficient money as a hospital nurse to maintain herself and her infant child. Owing to ill health she was obliged to give up this work, and is now unable to maintain herself or her child and desires to apply to the justices for a maintenance order against B. On the hearing B will undoubtedly contend that he has a home for A and is willing to take her back, but on account of his persistent cruelty A is not prepared to return. Having regard to the time limit of six months provided by s. 11 of the Summary Jurisdiction Act, 1848, upon what ground (if any) can an application now be made to the justices for an order under the Summary Jurisdiction (Married Women) Act, 1895 ?

A. If the cruelty was intended to force A to leave, B can be proceeded against on the ground of desertion, which is a continuing offence, see *Bowman* v. *Bowman*, 1925, 69 Sol. J. 325. If B is not providing for A she can proceed for neglect to maintain, which is now also a continuing offence. See Lieck & Morrison's "Matrimonial Jurisdiction of Justices," p. 63, and an article at p. 59, *ante*.

Settled Land—Duration of Settlement—Representation.

Q. 1269. A, by his will, left certain property to his son, B, for life, with remainder to B's son, C, in tail, with power to B to charge the property with a jointure in favour of B's wife. C attained the age of twenty-one, and was killed in the war, and in consequence the property became vested in B absolutely. B died in December last, having, during his lifetime—before marriage—charged portion of the property with a jointure in favour of his wife, who survived him. Will the property charged with the jointure be treated as settled at the death of B, and will a grant, "save and except," issue in respect of the free property to the executors, and a settled land grant issue to the trustees of the jointure rent charge in respect of the property charged with the jointure ?

A. On the death of B the settlement created by the will of A had not come to an end in respect of the land subject to the jointure rent-charge (S.L.A., 1925, s. 3). A grant "save and except settled land vested in the deceased which was settled previously to his death and remains settled land notwithstanding his death" (see letter from the Establishment Officer of the Principal Probate Registry, dated 2nd February, 1928, SOL. J., Vol. 72, p. 135), will be made to B's general executors. It is not considered that the trustees of the jointure, which we understand was secured by the limitation of a simple rent-charge to trustees for the life of B's wife, are entitled to a S.L.A. grant, for they are only concerned with an equitable interest (L.P.A., 1925, s. 1 (2), (*b*) and (3)). The parties entitled to this grant would appear to be the S.L.A. trustees of the will of A (if any) (A. of E. Act, 1925, s. 22 (1)), and, if none, A's personal representatives (S.L.A., 1925, s. 30 (3)): *re Gibbings*, 71 SOL. J. 911.

Income Tax—SCHED. A. PAID BY TENANT—CUSTODY OF RECEIPT.

Q. 1270. As between landlord and tenant, who is entitled to the official receipt for income tax, Sched. A, paid by the tenant and properly deducted by him from his next rent? Does the tenant pay the tax as agent for the landlord?

A. We express the opinion that the receipt, which is in the name of the tenant, is his property, and that he pays the tax, not as agent for the landlord, but on account of his own legal liability. The landlord before allowing the deduction of the tax paid is entitled to the production, but not the delivery of the receipt.

Enfranchised Land—PRE-1926 MORTGAGE BY COVENANT TO SURRENDER—PAYMENT OFF AND RELEASE AFTER 1925, —FINES AND FEES.

Q. 1271. In 1923 A by deed covenanted to surrender copyhold property to the bank in consideration of a loan to him by the bank. There was no actual surrender and admittance of the bank, neither was there any conditional surrender. The transaction of course was an equitable mortgage. The bank has recently been paid off, and the bank has now executed a deed in the following terms: "Now this deed witnesseth that the Bank as Mortgagees hereby assign, surrender and convey unto A all the hereditaments and premises which are now vested in the Bank subject to redemption under or by virtue of the Deed of Covenant." Does this deed require to be produced to the steward of the manor under s. 129 (9) L.P.A., 1922 for registration? A mortgage by covenant to surrender merely attracted no fines or steward's fees prior to the L.P.A., and therefore no fines or fees are payable upon the re-surrender. Had the mortgage to the bank been by way of conditional surrender without admittance fines and fees would have been payable, and it is assumed that in such event upon the discharge of the mortgage the reconveyance would not only require to be produced under s. 129 (9) but that also fines and fees would be payable as were payable upon the vacating deed and entering up of satisfaction upon the court rolls.

A. Since no fines and fees would have been payable in the above circumstances if there had been no enfranchisement, the ordinary assumption would be that none are now payable. However, by virtue of the L.P.A., 1922, 12th Sched., para. (1) (*f*) (i), the bank, as covenantee, acquired the 3,000 years' term as provided by the 2nd Sched. This being so, and the term being an interest in the land within s. 129 (1), the opinion here given is that the surrender of it is an "assurance" of it within sub-s. (9), and will therefore be avoided under sub-s. (1), unless produced to the steward. The steward may therefore demand all previous fees owing and the appropriate fee on the above transaction, which appears to be 13s. 4d., see Enfranchised Land (Steward's Fees Regulations), 70 Sol. J., 1223, Pt. II, para. 7 (*d*). If no fine would have been payable on the law as it stood before 1926, the opinion is here given that the Act has not imposed a new one.

NOTES OF CASES.

Court of Appeal.

Way *v.* **Bishop.** 8th May, 1928.

Lord Hanworth, M.R., Lawrence and Russell, L.JJ.

SOLICITOR—PARTNERSHIP—COVENANT "NOT TO PRACTISE" IN CERTAIN AREA—ACTING AS MANAGING CLERK TO ANOTHER SOLICITOR NOT "PRACTISING."

The plaintiff terminated a partnership between himself and the defendant. He then brought an action against the defendant, contending that the latter, by acting as managing clerk to a neighbouring solicitor, had broken a covenant in the partnership deed, by which the latter had bound himself "Not to practise in the borough of Portsmouth or within five miles thereof for a period of ten years from the date of the termination of the partnership." Clauson, J., granted the plaintiff an injunction to restrain the alleged breach. The defendant appealed.

Lord HANWORTH, M.R., in the course of his judgment, pointed out that "practising" for a solicitor had a special significance. It involved taking out an annual certificate, and paying stamp duty. The covenant here did not contain words such as "either directly or indirectly being engaged in the business of a solicitor or as a managing clerk," which were very common in documents of the sort. The only covenant was not "to practise." *Palmer* v. *Mallet*, 36 W.R. 460; 36 Ch. D. 411, differed from the present case in being a stricter covenant. There seemed to be a distinction between practising as a solicitor and acting as clerk to a solicitor. The appeallant was not breaking the covenant, and the appeal must be allowed, with costs.

LAWRENCE and RUSSELL, L.JJ., agreed. They pointed out that "practising as a solicitor" indicated acting as a solicitor in such circumstances that the relationship of solicitor and client arose between the person so acting and the person whose affairs he was transacting. The words connoted a principal, a person who had a practice; not one who was acting as the servant of another.

COUNSEL: *Archer*, K.C., and *Wynn Parry*, for the appellant; *Gavin Simonds*, K.C., and *Van den Berg*, for the respondent.

SOLICITORS: *S. Price, Sons & Co.*, for *H. H. Wadeson*, Portsmouth; *H. F. Strouts*, for *L. B. Way*, Portsmouth.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Villar: The Public Trustee** *v.* **Villar.**

Astbury, J. 18th April.

WILL—PROPERTY TIED UP UNTIL TWENTY YEARS AFTER THE DEATH OF THE LAST SURVIVOR OF QUEEN VICTORIA'S LINEAL DESCENDANTS LIVING ON 6TH SEPTEMBER, 1926, — UNCERTAINTY — IMPRACTICABILITY — DIFFICULTY AND EXPENSE OF ASCERTAINING PERIOD.

Originating summons.

By his will the testator tied up his property during the "period ending at the expiration of twenty years from the day of the death of the last survivor of all the lineal descendants of her late Majesty Queen Victoria, who shall be living at the time of my death," and provided for distribution of income in the meanwhile. It appeared that in 1922 there were about 120 descendants of Queen Victoria. The testator died in 1926. And this summons was taken out to determine whether this tying up was not void for uncertainty. Cases referred to were *Thellusson* v. *Woodford*, 1805, 11 Ves. 112; *In re Moore*, 1901, 1 Ch. 936.

ASTBURY, J., after stating the facts, said: "The result of the authorities is that if it is absolutely impracticable to

ascertain the extinction of the selected lives, the trust would be bad, but if, though the lives are numerous and the ascertainment of the survivors' death difficult and expensive, that death can be ascertained by ordinary legal testimony, the trust is valid. Here the testator has used an old form involving great difficulty and a long period of postponement of the vesting of the corpus. But, having regard to the character of the class, I am unable to say that it is impracticable having regard to the legal testimony probably available to ascertain when the corpus is distributable. The expense would probably be very great and would fall on the testator's issue, and if I could have seen my way to hold the trust invalid, I would gladly have done so. But I cannot hold it is impracticable, and therefore I hold that the trust is valid, though I hope the Court of Appeal will take a different view."

COUNSEL:—*J. H. Stamp; Sir Thomas Hughes*, K.C.; and *J. W. F. Beaumont; Topham*, K.C., and *Bischoff*.

SOLICITORS: *Gregory, Rowcliffe & Co.* for *Thomas Broomhead* of Taunton; *Church, Rendell, Bird & Co.* for *Bird & Lovibond*, of Uxbridge.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

In re Robert Loftus.

Lord Hewart, C.J., Avory, J., Shearman, J. 30th April.

VEXATIOUS LITIGATION—APPLICATION FOR ORDER TO PREVENT—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 51.

Motion by the Attorney-General for an order that the respondent, Robert Loftus, may not institute legal proceedings in any court without the leave of the High Court or a judge of the High Court. The application was made under s. 51 of the Supreme Court of Judicature (Consolidation) Act, 1925, which re-enacts the provisions of the Vexatious Actions Act, 1896. The respondent, a greaser on the steamship "Sussex" belonging to the Federal Steam Navigation Co. Limited, broke his wrist in March, 1919, and under the Workmen's Compensation Act secured compensation in the City of London Court. The compensation was later reduced to 15s. a week, and when the respondent subsequently applied for an increase an order to terminate the compensation was made on the ground that he had completely recovered from the injury. Shortly afterwards a claim for a lump sum of £1,406 was dismissed, and he has since made a number of applications, the sums claimed rapidly increasing, until in December, 1927, it reached £304,000.

Lord HEWART, C.J., giving judgment, said that none of the costs incurred by the respondent on his applications had been paid. The court had power under the Act to make the order asked for where there had been habitual, persistent and unnecessary institution of vexatious legal proceedings; and the present case was a proper one for making an order.

AVORY, J., and SHEARMAN, J., agreed.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *Gween*. The respondent appeared in person.

SOLICITOR: *The Treasury Solicitor*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Pearman *v.* Charlton.

Wright, J. 1st May.

ADMINISTRATOR—POST OFFICE SAVINGS BANK ACCOUNT—NOMINATION FORM—TO BE SIGNED IN PRESENCE OF WITNESS.

The plaintiff, William Pearman, claimed as administrator of one Percy Pearman, the sum of £676 11s. which stood to his credit in the Post Office Savings Bank at the time of his death. The defendant, Frank Charlton, said that after the death of Percy Pearman he had received the money from the Postmaster-General pursuant to a nomination form in his favour signed by the deceased. He pleaded that the nomination was good and valid, and alternatively claimed that it constituted a good and valid *donatio mortis causa*. The witness to the nomination form gave evidence that it had not been signed in his presence as required by No. 66 of the Post Office Savings Bank Regulations.

WRIGHT, J., said that it was a necessary condition to the validity of the nomination form that it should be signed by the nominator in the presence of a witness. This nomination was not valid and binding and payment had been made by the Postmaster-General under a mistaken impression. Judgment for the plaintiff, the defendant's costs as between solicitor and client to come out of the estate.

COUNSEL: *Bensley Wells* and *Theodore Turner*, for the plaintiff; the defendant appeared in person.

SOLICITORS: *Raymond Oliver & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Neal *v.* Guy.

Lord Hewart, C.J., Avory, J., Shearman J. 8th May.

OMNIBUS — HORSE-DRAWN — MOTOR-OMNIBUS — BYE-LAW REGULATING NUMBER OF PASSENGERS—APPLICABLE TO BOTH TYPES OF VEHICLE.

Case stated from the Durham justices. Frederick Neal, the appellant, a hackney carriage inspector, preferred an information against the respondent, Albert William Guy, for that he had, contrary to No. 14 of the by-laws of the Urban District Council of Bishop Auckland, carried fifty-five persons on an omnibus licensed to carry thirty-nine. The by-laws, duly approved by the Ministry of Health, were made in 1901, and paragraph 1 of by-law 14 regulated the number of persons to be carried by omnibuses, while in subsequent paragraphs of the same by-law were references to horses. It was contended by the appellant that "omnibus" in the first paragraph included motor-omnibus. The respondent contended that the by-laws were applicable only to horse-drawn omnibuses, and not to mechanically propelled vehicles. The justices were of the opinion that the by-laws were obsolete and were not applicable to motor-omnibuses, and dismissed the information.

Lord HEWART, C.J., stated the facts, and said that there was no reason for thinking that part of the by-law referred only to horse-drawn vehicles. This omnibus, licensed to carry thirty-nine, had in fact carried fifty-five. Appeal allowed.

AVORY, J., and SHEARMAN, J., agreed.

COUNSEL: *H. C. Davenport*, for the appellant; the respondent was not represented.

SOLICITORS: *Corbin, Greener & Cook*, for *J. T. Proud & Son*, Bishop Auckland.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

In re A Solicitor.

Lord Hewart, C.J., Avory, J., Shearman, J. 9th May.

SOLICITOR—INDIA—MISAPPROPRIATION OF CLIENTS' MONEY—MOTION FOR ORDER TO ANSWER AFFIDAVIT—SOLICITORS' ACT, 1919, 9 & 10 Geo. 5, c. 56, s. 10.

Motion for an order that a solicitor should be required to answer the matters contained in an affidavit or be struck off the Rolls. In November, 1925, the solicitor whose conduct was impugned joined as assistant solicitor on a three years' agreement a firm practising in Bombay. It appeared from an affidavit sworn by the partners in the firm that the assistant solicitor had misappropriated funds of certain of their clients. The respondent had filed a general answer denying the charges. Counsel for the prosecutors on the hearing of the present motion said that since the Solicitors' Act, 1919, the usual procedure was before the statutory committee of the Law Society. These proceedings had been so begun, but the

committee had been unable to deal with them, as the alleged offences took place in India, and the committee had no power to take evidence abroad. Section 10 of the Solicitors' Act, 1919, preserved the jurisdiction of the High Court. Counsel for the solicitor said that the exercise of the inherent jurisdiction was discretionary. To exercise it on the materials in the present case would be a great hardship on the solicitor, who would have to entrust his interests in a matter affecting his honour and career to solicitor and counsel in India, where he could not instruct them personally. In reply, counsel for the prosecutors submitted that if an inquiry were held in India and the charges proved, with the result that the solicitor was struck off the Rolls in India, they would have to be re-proved in England, and the expense would be greater.

Lord HEWART, C.J., said that under the Solicitors' Act, 1919, large powers were given to the Committee of The Law Society, constituted under s. 12 of the principal Act, to deal with misconduct alleged on the part of solicitors. The purpose and policy of that legislation was undoubtedly to make solicitors as far as possible masters in their own house. But in s. 10 there was a saving clause of the jurisdiction of the court. That was an important reservation, and in a proper state of circumstances the power reserved would be employed. The question raised by the application before the court was not a general question depending on the facts and circumstances of that case; it had been made clear that the object was to obtain an inquiry before a master as a preliminary to the taking of evidence on commission in India—undoubtedly a cumbersome and costly proceeding. One thing, at any rate, was clear, the applicants were in a position, if they were so minded, to bring the necessary evidence here before The Law Society. The alternative suggestion seemed roundabout, and unnecessarily costly. On the particular facts of the case it did not seem one in which the court ought to order an inquiry.

AVORY, J., and SHEARMAN, J., agreed.

COUNSEL: *S. O. Henn Collins*, for the prosecutors; *Soskice*, for the solicitor.

SOLICITORS: *Sanderson, Lee & Co.*; *Wm. Chas. Crocker.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Pickup *v.* Dental Board of the United Kingdom.

Lord Hewart, C.J., Avory and Shearman, JJ. 10th May.

DENTIST—NAME ERASED FROM DENTISTS' REGISTER—APPEAL—DENTISTS ACT, 1878, 41 & 42 Vict. c. 33, s. 13—DENTISTS ACT, 1921, 11 & 12 Geo. 5, c. 21, s. 8.

Appeal from an order of the General Medical Council.

This appeal, under s. 9 of the Dentists Act, 1921, was against an order of the General Medical Council that the appellant's name should be erased from the Dentists' Register on the ground that he had been convicted of misdemeanours within the meaning of s. 13 of the Dentists Act, 1878. That section, as amended by s. 8 of the Dentists Act, 1921, empowered the General Medical Council on the report of the Dental Board to order a name to be erased after an inquiry by the Board in cases where a dentist was liable to have his name erased under the section.

Lord HEWART, C.J., said that the real question was what was the true meaning of the expression "misdemeanour" in s. 13 of the Dentists Act, 1878. In his opinion the contention that it meant "misdemeanour triable on indictment" could not be supported. From the proviso to the section it seemed that it was contemplated that the offences might be of a trivial nature, and the liability to erasure still incurred. Appeal dismissed.

AVORY and SHEARMAN, JJ., delivered judgments to the same effect.

COUNSEL: *Maurice Healy*, for the appellant; *Cecil Whiteley* K.C., and *D. C. Bartley*, for the Dental Board.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Lewis *v.* Lewis.

Lord Merrivale, P., and Bateson, J. 17th April.

HUSBAND AND WIFE—APPEAL FROM JUSTICES—MAINTENANCE ORDER—SUMMONS FOR WILFUL NEGLECT TO MAINTAIN—ADJOURNMENT AFTER RECEPTION OF EVIDENCE—COURT DIFFERENTLY CONSTITUTED AT ADJOURNED HEARING—ONE MEMBER ONLY OF SECOND COURT HAVING BEEN PRESENT AT FIRST HEARING—SUMMARY JURISDICTION ACT, 1879, 42 & 43 Vict. c. 49, s. 20, sub-s. (9).

This was an appeal from an order of the Hythe (Hants) Justices ordering the husband to pay the wife maintenance at the rate of £1 per week on the ground of the husband's wilful neglect to maintain her. The first hearing had taken place before four justices and there had been an adjournment with a view to a settlement. The adjourned hearing was before two justices only, one of whom had been present on the first occasion when part of the evidence had been given. Counsel for the husband (the wife was not represented on the appeal) said that the grounds of appeal were that there was no evidence that the appellant had wilfully neglected to provide reasonable maintenance for his wife, and that the justices who made the order were not the justices who heard the evidence of the wife or who constituted the court when the appellant submitted that there was no case to answer. He relied on the latter point. By the Summary Jurisdiction Act two justices had to hear the case, and the order which had been made was irregular.

Lord MERRIVALE, P., in giving judgment, said that the husband and wife had lived apart for some two years after serious disagreements between them. Shortly after the two years' separation the wife took proceedings under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, against her husband, alleging persistent cruelty which had caused her to live separate and apart from him. On that summons the objection was raised that the proceedings had not been begun within the statutory six months, and the summons was withdrawn. A second summons was then issued by the wife, alleging wilful neglect on the part of the husband to maintain her. Four justices of the county heard part of the evidence and then adjourned the summons with a view to an arrangement being come to between the parties. At the resumed hearing only one of the justices who had sat at the first hearing was present. The order for maintenance was, therefore, made under a misapprehension, and the proceedings were null and void. The court would set aside the order which was the subject of the appeal and refer the matter back to the justices to be dealt with according to law.

BATESON, J., agreed.

COUNSEL: *Bucknill* and *F. L. C. Holson*, for the appellant husband.

SOLICITORS: *Speechly, Mumford & Craig*, for *Lamport, Bassitt & Hiscock*, Southampton.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

COMMITTEE OF INQUIRY ON LEAD-ETHYL PETROL.

The Committee conferred on the 25th ult. with Surgeon-General Cumming, the Head of the Public Health Service of the United States of America. Dr. Leake, one of the senior officers of that service, was also present.

The extensive researches which have been conducted in America by the Public Health Service and others for the purpose of ascertaining whether there was any risk of lead poisoning by the use of ethyl petrol were fully discussed.

A further meeting will be held in Room 61 on the second floor of H.M. Office of Works, St. James's Park, S.W.1, at 11 a.m. on Wednesday, the 6th June, for the purpose of taking evidence from Sir William Pope, K.B.E., F.I.C., F.R.S., Professor H. B. Baker, C.B.E., D.Sc., F.R.S., and Professor G. I. Finch, M.B.E. The proceedings at that meeting will be open to the public.

Report of the Committee on "Arrestment on the Dependence."

To the Right Honourable The Lord Hailsham,
Lord High Chancellor of Great Britain.

1. We were appointed a Committee by your Lordship's predecessor "to consider the question whether it is expedient to adopt in England a system similar to that of arrestment upon the dependence in Scottish law, and, if so, by what methods and subject to what safeguards arrestment should be effected." We now have the honour to present to your Lordship our Report.

2. We have held ten sittings and have examined the witnesses whose names are set out below. We desire to thank all these witnesses for their assistance and for the valuable information they so readily placed before us, especially in regard to the law practice and procedure of other countries. We also invited the Chamber of Shipping of the United Kingdom, the Federation of British Industries, the Manchester Chamber of Commerce, and the British Overseas Banks Association to give evidence but they did not desire to express any views.

3. Arrestment upon the dependence in Scottish law is a procedure whereby personal property of a defendant in the hands of third parties, and ships even in the hands of the defendant, can be attached by the plaintiff in an action begun or about to be begun against the defendant, to the end that such property may be available for execution if judgment be obtained. No judge's order is required to authorise an arrestment; it proceeds upon a warrant issued as a matter of course. It is applicable only where the court has jurisdiction; unless the defendant can be sued, there is no action upon the dependence of which an arrest can be made. It is altogether distinct from the Scottish process of arrest to found jurisdiction; but, as against persons outside Scotland, the two processes are commonly combined, the one to give jurisdiction and the other to obtain security for the expected judgment debt. The process is applicable whenever the claim is a money claim, whether in debt or damages. With certain exceptions, it is applicable to all personal property, including debts and other choses in action.

4. We have heard no suggestion that arrestment upon the dependence should be adopted without modification in England. The suggestions made to us have in some respects gone beyond and in others fallen short of the Scottish procedure. In particular the demand for a change in the law has on the one hand been limited to claims against persons resident abroad, and, on the other hand, extended to property of the defendant, whether in the hands of third persons or of the defendant himself. We have therefore considered the question at large, whether it is expedient to adopt in England any form of procedure whereby the personal property within the jurisdiction of a defendant resident abroad should at the instance of the plaintiff be subject to interim arrest by way of security for the satisfaction of the judgment which the plaintiff hopes to obtain in an action which he has begun or is about to begin to enforce a money claim.

5. By those who advocated a change in the law the mischiefs to be remedied were presented as in the main incident to oversea trade. It was complained that there were difficulties in the way of English claimants enforcing their just claims against persons resident abroad, notwithstanding that such persons had property in England. We investigated a number of cases put before us as illustrating these difficulties.

6. With regard to many of the cases it was apparent that the cause of action was not one for which the foreign resident could be sued here; it was not one in respect of which a writ could be served out of the jurisdiction. In such cases, as there could be no action here, there could be no interim arrest of property here. Nothing short of arrest to found jurisdiction, coupled with arrest by way of security, would avail the English claimant. We were not asked to recommend arrest to found jurisdiction, nor was that subject within our reference.

7. As regards another group of cases we were invited to recommend a change in the law as administered by the Admiralty Court in respect of proceedings *in rem*. The complaint was that foreign owners, liable in respect of causes of action creating a liability *in rem* against a ship, remove it from or refrain from sending it within the jurisdiction, while they continue their trade with England by other ships upon which no writ *in rem* can be served. It was asked that where a cause of action against a non-resident owner of a ship is one which gives a right *in rem* against that ship, it should be enforceable by proceedings *in rem* against any other ship of the same owner.

The right so extended would apply both where the cause of action was one in respect of which a writ *in personam* could not be served out of the jurisdiction, e.g., collision on the high seas or in foreign waters, and where the cause of action was one in respect of which a writ *in personam* could be served out of the jurisdiction, e.g., necessaries supplied in an English port.

A writ *in rem* is served upon the ship and the owner of the ship must either appear and become a party to the action or let judgment go by default, not indeed against himself personally, but against the *res*. If the writ *in rem* is followed by arrest the *res* is made security for any judgment which may be obtained. The writ *in rem* followed by arrest is thus a process whereby jurisdiction and also interim security are obtained.

To extend this combined process to other ships of the same owner, in cases where a writ *in personam* could not be served out of the jurisdiction, would in effect permit a kind of arrest to found jurisdiction. And in all cases, even in those in which a writ *in personam* can be served out of the jurisdiction, to permit a writ *in rem* against other ships of the same owner would be to create a new kind of jurisdiction. The very basis of arrestment upon the dependence is an existing jurisdiction. The proposal therefore seems to us to be beyond our reference. In any case, having regard to the fact that the connected matter of maritime liens has recently been the subject of international agreement, it would seem to us to be inexpedient to make a drastic change in proceedings *in rem* until the proposal has been considered internationally.

8. Leaving aside arrest to found jurisdiction and proceedings *in rem*, we come to that which is within our reference, namely, the remedy of arrest as ancillary to an action which is properly begun here by service of a writ *in personam*. As we have already said we have been asked to recommend this process only in cases where the defendant is resident abroad, and not as in Scotland to make it of general application. Such a remedy would, of course, be applicable to one of the kinds of claims against shipowners already mentioned, namely where a writ *in personam* can be served. It would also apply to all cases where a suable defendant has within the jurisdiction ships, goods, funds at a bank, actionable money claims or other personal property.

If the defendant is a regular trader here, having from time to time ships or goods or funds here, they are always subject to be taken in execution of a judgment when obtained upon a writ *in personam*. But it is always possible that a resident abroad, knowing that he is being or is about to be sued here, may remove from the jurisdiction or dispose of any property he may have here, and so render the judgment fruitless.

9. Our aim has been to discover the extent of the mischief. We have had to rely mainly on the evidence of solicitors, some of them speaking as members of Chambers of Commerce. We fully appreciate its great value, but at the same time we regret that the Chambers of Commerce sent us no evidence by traders or others who had themselves suffered loss in the way described. In addition to the evidence of the experienced solicitors who represented the Chambers of Commerce of London, Liverpool and Hull, we had put before us communications from a large number of other solicitors engaged in commercial practice. We were impressed by the fact that many eminent firms had no experience of the mischief complained of. The President of the Law Society, who, for himself and on behalf of that Society, strongly opposed the suggested change in the law, had never known an instance. On the other hand, when the instances put before us on behalf of the Chambers of Commerce were examined, and those which would only be met by arrest to found jurisdiction or an extended writ *in rem* were eliminated, there remained some cases where the resident abroad escaped payment by removing or disposing of his property before judgment or where it was not thought worth while to take proceedings because it was anticipated that before judgment such property would be removed. And it is obvious that such cases may occur, both in commercial and in other transactions. We are not, however, satisfied that these cases are frequent. Where they occur, interim arrest would obviously assist the plaintiff.

10. But the question must also be looked at in regard to the defendant. Interim arrest is a process in aid of a claim asserted, but not yet proved; the claim may be good, but it may be wholly unfounded or exaggerated in amount. It was proposed to us that, differing herein from the Scottish law, interim arrest should be made only upon the order of a judge and upon *prima facie* evidence of a good cause of action and of the amount owing. But even so, the application, to be of any value, must be *ex parte* and the judge would have no real means of testing the validity of the claim or, in many cases, of estimating the amount. An order for arrest when made may do the greatest harm to the defendant. If his ship in port or goods in warehouse or funds in the hands of his bankers or agents be arrested, his trade may be hampered and his credit may be seriously impaired and perhaps ruined. The

injury to credit may be all the greater, if the arrest be made upon a judge's order. Nor is the risk of serious injury to credit removed by providing for release upon giving security, as in the Scottish procedure and in Admiralty actions *in rem*. An honest defendant may be quite unable to find security. Moreover, the arrest is proposed to be used against persons resident abroad and, before such persons can appear and arrange for security, time must elapse and the injury to credit may be irreparable. If the defendant be really a dishonest person who is avoiding payment of his just liabilities his credit deserves no consideration. But the process of interim arrest cannot with certainty discriminate between defendants who are in truth liable and those who are not.

Nor is it only the defendant who is affected by an arrest of goods or funds. Third parties may be prejudiced. For instance, it may well be that the goods arrested are about to be delivered under contract of sale to others or that against the funds arrested bills in the hands of others are about to mature. Even if, as in some Continental systems, the plaintiff were required to give security against damage caused by arrest without cause, such security, while it might protect an honest defendant, would be of no benefit to third parties injured by the arrest.

The possible effect upon trade generally has also to be borne in mind. For instance it was suggested to us that if foreign banks having moneys on deposit here or non-resident merchants remitting funds to banks or agents here for the purpose of their trades were exposed to the risk of arrest of those moneys at the hands of plaintiffs with unfounded or exaggerated claims, the result might well be to limit the extent of their operations. The Committee of the London Clearing Bankers were strongly opposed to interim arrest, largely on the ground of the inconvenience and loss it would cause to the mercantile community. They said they did not " as plaintiffs desire to reap a rare and occasional advantage from a system for which they had found no necessity in practice and which was in their opinion fraught with so much risk and danger to commercial interest." In our judgment, this opinion, like the opinion of the Law Society, ought to carry very great weight.

11. We were told that, speaking generally, the Scottish Procedure has not given rise to complaint or been in practice abused. It must be remembered however that in Scotland the practice is of ancient origin and has long been in use by lawyers who are accustomed to it. In such circumstances it is, no doubt, used with discretion. In England it would be a new process, newly sanctioned by Parliament, and unfettered by custom. In such circumstances there might well be risk of its oppressive use.

12. In our opinion the case for a change in the law has not been made out. We have accordingly not thought it useful to report in detail upon questions of method and safeguards against abuse. If these are at any time to be considered, the following among other matters will require careful investigation ;—

(*a*) whether arrest should be made only upon the order of the court or a judge.

(*b*) whether arrest in the hands of third parties should be made by injunction or otherwise.

(*c*) what machinery, analogous to arrest by the Admiralty Marshal, should be employed for arrest in the hands of the defendant, including provisions for safe custody, insurance, sale of perishable articles and so forth.

(*d*) provisions for discharge of the arrest if action is not brought within a limited time.

(*e*) provisions for release upon giving bail.

(*f*) provisions for the intervention of third parties alleging that the property arrested belongs to them and not to the defendant, and the trial of issues arising upon such intervention.

(*g*) whether the plaintiff should be required to give security against damages for wrongful arrest, and whether he should be liable in damages only in case of malicious arrest, or liable whenever he fails in his action or procures an arrest in excess of the amount he recovers.

(*h*) where there are several arrests of the same property, whether priority of arrest should give priority of payment or whether the arrestors should all be upon the same footing

13. Upon the whole matter our conclusion is that it is not expedient to adopt in England a system similar to that of arrestment upon the dependence in Scottish law.

14. We desire to express our appreciation of the assistance given to us by our Secretary, Miss Enid Rosser.

We are, my Lord,
Your obedient servants,
MAURICE HILL (*Chairman*).
T. J. BARNES. H. P. MACMILLAN.
JOHN ARCHIBALD. JAMES MARTIN.
ENID ROSSER (*Secretary*).
Dated this 16th day of April, 1928.

The following Witnesses appeared before the Committee ;—Mr. E. H. Barchard (Committee of London Clearing Banks), Dr. W. R. Bisschop, Mr. C. A. Coward, LL.D. (The Law Society), Mr. Arthur D. Dean (Liverpool Chamber of Commerce), Dr. Huecking, Mr. T. C. Jackson, LL.D. (Hull Chamber of Commerce), Mr. E. G. Roscoe (Solicitor) (London Chamber of Commerce), Mr. T. G. Wright, LL.B. (Solicitor), Glasgow.

Societies.

Chester and North Wales Incorporated Law Society.

The forty-seventh annual meeting of this society was held at the Town Hall, Chester, on Wednesday, the 23rd May, the retiring President, Mr. T. Moore Dutton (Chester) in the chair. It was reported that the society now numbers 183 members. The society's prizes for 1927 were presented as follows : " The John Allington Hughes " Prize to Mr. W. J. P. Williams, who served his articles with Mr. William George, of Portmadoc ; " The Sir Horatio Lloyd " Prize to Mr. W. E. E. Jones, B.A., LL.B., who served his articles with Mr. J. Pentir Williams, of Bangor ; and the Intermediate Prize to Mr. H. R. Davies, who is articled to Mr. David Hughes, of Chester.

The following were elected officers of the society for the ensuing year : President, Mr. J. J. Marks (Llandudno) ; Vice-President, Mr. F. Horace Cooke (Crewe) ; Hon. Secretary, Mr. Henry G. Hope (Chester) ; Hon. Treasurer, Mr. T. Moore Dutton (Chester) ; Hon. Auditors, Mr. W. H. Barnes and Mr. David Hughes (both of Chester). The following, with the officers named, are the committee for the year : Messrs. R. J Kendrick (Wrexham), H. P. Rigby (Middlewich), F. Turner (Chester), W. C. Deakin (Northwich), R. Guthrie Jones (Dolgelley), J. Eustace Jones (Chester), S. Ll. Kenrick (Ruabon), J. S. Lloyd (Wrexham), R. Farmer (Chester), W. E. Hough (Runcorn), J. E. Hallmark (Llandudno), R. S. Kelly (Mold), and Cyril O. Jones (Wrexham).

The annual dinner was held in the evening at the Grosvenor Hotel under the Presidency of Mr. J. J. Marks. The Mayor of Chester and Dr. Sprent (President of the Chester and North Wales Medical Association) and Mr. W. E. E. Jones were the guests of the society.

Legal Notes and News.

Honours and Appointments.

In the Court of Session, Edinburgh, on Wednesday, with the customary ceremonial, Mr. ALEXANDER MORRICE MACKAY, K.C., was installed as one of the Senators of the College of Justice, and took his seat as Lord Mackay.

Mr. E. G. BARCLAY, an English lawyer who has practised in Paris for many years, has been appointed Honorary Vice-President for life of the British Chamber of Commerce in that city in recognition of the valuable services he has rendered that body as a director and during the four years he was its president.

Wills and Bequests.

Mr. Richard Evan Jones, M.A., O.B.E., J.P. (fifty-four), of The Terrace, Borth, Cardiganshire, retired solicitor, left estate of the gross value of £55,023.

COSTS AGAINST POLICE.

The magistrates at Ellesmere Port (Cheshire) on Wednesday stopped a case in which Mr. John Kerfoot Roberts, a Holywell solicitor, was accused of being drunk in charge of a motor car, and awarded him £10 10s. costs against the police. This was after Dr. Gerrard, the police surgeon, had stated in evidence that Mr. Roberts was perfectly sober, passing through a test " very satisfactorily."

THE SAVIDGE INQUIRY.

Mr. S. Hoare has been appointed secretary of the Committee appointed by the Secretary of State to inquire into the action of the police in connexion with their interrogation of Miss Savidge on 15th May.

The Committee will meet on Wednesday, 6th June, at the Royal Courts of Justice, at 11 a.m. Any communication to the Committee should be addressed to the Secretary at the Home Office, Whitehall, London, S.W.1.

CORONER ON LUNACY LAW.

Comments on the power of a relieving officer to override the certificate of a doctor in lunacy cases were made by the Hackney Coroner on Saturday at an inquest on the body of Agnes Kate Livemore (thirty-three), married, of Dalston, who threw herself from a window at the Hackney Infirmary. It was stated that before entering the infirmary she had been in the German Hospital, where the resident medical officer certified that she should be placed under proper control, and she was discharged to the care of her husband. The relieving officer stated that he saw the woman at the German Hospital and was not satisfied that it was a case he could deal with under the Lunacy Act. Replying to the coroner, he said that in some cases he over-rode the doctor's certificate. The coroner said that by Act of Parliament doctors were given discretionary powers to say when an individual required to be placed under control. In his opinion that ought to be sufficient to satisfy the relieving officer. It was unfortunate that in this case medical opinion had been overridden, but apparently the relieving officer had acted in accordance with his legal rights. A verdict of " Suicide while of unsound mind " was recorded.

CORONER'S COMMENT ON LANDLORD.

A landlord's demand for part of the proceeds of the sale of a business, as a condition to agreeing to a change of tenancy, was criticised by the coroner at a recent inquest at Romford on the body of Charles Collins, shopkeeper, of Ilford-lane, Ilford, who was found on Chadwell Heath with his throat cut. Mr. William Taylor, of Hart-parade, Ilford, said he let a lock-up shop to Collins. He admitted that when Collins wanted to sell his business he agreed to accept the new tenant, but told Collins he would expect £30 of the £100 he was receiving. The Coroner returned a verdict of " Suicide while of unsound mind," and said no doubt Taylor's action had something to do—he did not say all—with Collins's ultimate end. In his state of health he did not want any further trouble. Taylor was not justified in asking for the £30, as he was not losing anything by the change of tenancy.

SOLICITOR AS ADVOCATE WITHOUT CERTIFICATE.

David Nimmo, whose address was given as Linden-gardens, Bayswater, was fined three guineas, with five guineas costs at the West London Police-court on Tuesday, for pretending that he was a qualified solicitor at the West London County Court.

Mr. Robert Humphreys, prosecuting for the Law Society, stated that Nimmo was adjudicated bankrupt last October, and was, therefore, not entitled to a certificate until he had got his discharge, but he appeared robed as a solicitor and advocate before the judge.

Mr. Nimmo urged that he had been guilty only of a technical offence. Through no fault of his own he was adjudicated bankrupt, and he had since acted as managing clerk to a solicitor. The cases at the county court were not actions, but chamber matters on which he had a perfect right to appear as advocate. It was only out of deference to the court that he robed.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y June 4	Mr. Jolly	Mr. More	Mr. Hicks Beach	Mr. Bloxam
Tuesday .. 5	Hicks Beach	Ritchie	*Bloxam	More
Wednesday 6	Synge	Bloxam	*More	Hicks Beach
Thursday . 7	More	Jolly	*Hicks Beach	Bloxam
Friday 8	Ritchie	Hicks Beach	*Bloxam	More
Saturday .. 9	Bloxam	Synge	More	Hicks Beach

Date.	Mr. Justice Maugham.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
M'nd'y June 4	Mr. More	Mr. Ritchie	Mr. Synge	Mr. Jolly
Tuesday .. 5	*Hicks Beach	*Synge	Jolly	Ritchie
Wednesday 6	Bloxam	*Jolly	Ritchie	*Synge
Thursday . 7	*More	*Ritchie	Synge	Jolly
Friday 8	Hicks Beach	Synge	Jolly	*Ritchie
Saturday .. 9	Bloxam	Jolly	Ritchie	Synge

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 14th June, 1928.

	Middle Price 30th May	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	87⅞	4 11 6	—
Consols 2½%	56¾	4 8 6	—
War Loan 5% 1929-47	101⅛	4 18 9	4 18 9
War Loan 4½% 1925-45	96¾	4 13 0	4 16 6
War Loan 4% (Tax free) 1929-42	100¼	4 0 0	4 0 0
Funding 4% Loan 1960-1990	90	4 9 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¾	4 6 0	4 7 0
Conversion 4½% Loan 1940-44	97¼xd	4 12 0	4 16 0
Conversion 3½% Loan 1961	77⅞	4 10 0	—
Local Loans 3% Stock 1921 or after	65½	4 12 0	—
Bank Stock	264	4 11 0	—
India 4½% 1950-55	93	4 17 0	5 0 0
India 3½%	72	4 17 0	—
India 3%	62	4 17 0	—
Sudan 4½% 1939-73	97	4 13 0	4 17 0
Sudan 4% 1974	85	4 15 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	83	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	93	4 6 0	5 0 6
Cape of Good Hope 3½% 1929-49	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	101	4 19 0	5 2 6
Gold Coast 4½% 1956	96	4 13 6	4 17 6
Jamaica 4½% 1941-71	93	4 16 0	4 18 6
Natal 4% 1937	93	4 6 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	97	4 13 0	4 17 6
New Zealand 5% 1946	104	4 16 6	4 16 6
Queensland 5% 1940-60	98	5 2 0	5 3 0
South Africa 5% 1945-75	104	4 16 0	5 0 0
South Australia 5% 1945-75	99	5 1 0	5 0 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	100	5 0 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 12 6	—
Birmingham 5% 1946–56	104	4 16 6	4 17 7
Cardiff 5% 1945–65	102	4 18 0	4 18 0
Croydon 3% 1940–60	71	4 5 6	5 0 0
Hull 3½% 1925–55	78	4 10 0	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 11 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4 12 6	—
Manchester 3% on or after 1941	64	4 13 6	—
Metropolitan Water Board 3% 'A' 1963–2003	66	4 13 0	4 17 0
Metropolitan Water Board 3% 'B' 1934–2003	66½	4 11 0	4 15 6
Middlesex C. C. 3½% 1927–47	84	4 3 6	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	64	4 15 6	—
Stockton 5% 1946–66	103	4 17 0	4 19 0
Wolverhampton 5% 1946–56	103	4 17 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	85	4 14 0	—
Gt. Western Rly. 5% Rent Charge	103	4 17 0	—
Gt. Western Rly. 5% Preference	99	5 1 0	—
L. & N. E. Rly. 4% Debenture	81	4 19 0	—
L. & N. E. Rly. 4% Guaranteed	76	5 5 0	—
L. & N. E. Rly 4% 1st Preference	66	5 19 0	—
L. Mid. & Scot. Rly. 4% Debenture	82½	4 16 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	76¾	5 5 0	—
Southern Railway 4% Debenture	82½	4 16 6	—
Southern Railway 5% Guaranteed	101	4 19 0	—
Southern Railway 5% Preference	94	5 6 0	—

Continued from page xiv.

SOLICITOR recommends Junior Clerk (21). Six years present office; shorthand, typewriting; clerical side of work of Clerk to Commissioners of Taxes. Reasonable salary.—"H.," Box 405, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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SOLICITOR, young, energetic and capable, requires post London; good experience; willing undertake advocacy, if required; salary by arrangement; temporary engagement might be considered.—"G.," Box 410. Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (35), Cambridge graduate, desires Managing Clerkship. Good general experience.—Apply "Alpha," Box 320, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

EX-OFFICER, 33, seeks employment, home or abroad, any capacity; capable representative, organiser, managerial; knowledge motors, aviation, engineering, building, etc.; fair French, good Danish. 9284.

GENTLEMAN, middle aged, single, perfect health, seeks position of trust; would undertake duties of caretaker for Chapel; highest references as to character; Nonconformist; country town near London preferred; some knowledge of gardening. 1217.

EX-OFFICER, University education, wants work; age 26, tall, good appearance; full knowledge India and Egypt; secretarial or representative duties preferred. Willing to travel. 9246.

REPRESENTATIVE, with live connection amongst hardwood buyers in London, the Home, Eastern and Southern Counties; thorough knowledge all branches of the trade; ex-Officer, aged 32; willing to go abroad if necessary, or to the Colonies. Dis. 205.

EX-OFFICER, age 42, married, ability and personality, 25 years in motor trade, trained engineer, experience sales administration and specialist in running and maintaining transport; excellent testimonials; urgently requires position, home or abroad. 9153.

DISABLED Army Captain, promoted from ranks, with young family, seeks suitable employment. Had considerable War Office administrative experience. Could supervise large staff, male or female. South of England or North of Ireland preferred. Dis. 203.

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FOR sale, old-established practice in West Riding of Yorkshire, owing to contemplated retirement of sole partner. All-round business, including advocacy.—"Yorks," Box 445, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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VALUABLE CORNER PREMISES occupied by

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Reversions from 23 years.

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W. E. HURCOMB

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Having a total estimated rental value of PER £230 ANN. which will be offered for SALE by AUCTION, by Messrs.

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Particulars and conditions of sale may be obtained of Julius Bertram, Esq., Solicitor, 14, Suffolk-street, Pall Mall East, S.W.1, and from the Auctioneers, 77, Chancery-lane, W.C.2. Tel. Holborn 6666.

FREEHOLD GROUND RENTS.

By Order of Executors of Rees Jones deceased.

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Printed by THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., at "Oyez" House, Fetter Lane, London, E.C.4, and Published at 29, Breams Buildings, E.C.4. ('Phone: Holborn 1853)
Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide Street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount Road, Madras. and R. Cambray & Co., 10 Hastings Street, Calcutta; Australia and New Zealand: "The Times," 255a George Street, Sydney, N.S.W. Saturday, June 2nd, 1928.